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THE SURVEY OF CHILD SUPPORT AWARDS: PRELIMINARY ANALYSIS OF PHASE 2 DATA (OCTOBER 1998 – MAY 1999)

Research Report

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The Survey of Child Support Awards:

Preliminary Analysis of Phase 2 Data (October 1998 – May 1999)

Prepared by:
Lorne D. Bertrand, Ph.D.
Canadian Research Institute for Law and the Family

Joseph P. Hornick, Ph.D.
Canadian Research Institute for Law and the Family

Nicholas M.C. Bala, B.A., LL.M.
Faculty of Law, Queen's University

Presented to:
Child Support Team
Department of Justice Canada

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EXECUTIVE SUMMARY

In 1990, the Federal-Provincial-Territorial Family Law Committee began a study to address widespread dissatisfaction concerning the determination of child support. On behalf of the Committee, the Department of Justice Canada undertook a four-year program of research to create a formula for determining child support award amounts in cases of family breakdown.

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*. (The amendments to the *Income Tax Act* concerning the tax treatment of child support payments also took effect on May 1, 1997.) The amendments to the *Divorce Act* require the Minister of Justice to review the operation of the Guidelines and report to Parliament by May 1, 2002. Over the next two years, the Department's program of research must include preparation of a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms has established a Research and Evaluation Subcommittee to help develop the comprehensive program of socio-legal research to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way award amounts are calculated under the Guidelines, the Task Force and Research Subcommittee members agreed that the first research priority should be to collect information about support orders and variation orders made on or after May 1, 1997. This project will provide some early indications about the implementation of the Guidelines, and provide for ongoing or periodic collection of information from the courts until the end of the Child Support Initiative in March 2001.

This report summarizes the preliminary findings from Phase 2 of the project, which began in the fall of 1998. The report is divided into two parts. Part 1 describes the processing of divorce cases involving child support orders and documents issues related to that process at the different sites involved in the project. Part 2 presents the results of the analysis of the data collected from the fall of 1998 through May 31, 1999.

General observations that can be derived from the information presented in Part 1 are:

Progress Towards Full Implementation

Based on site visits and follow-up telephone interviews, it is clear that staff at the study sites are strongly committed to the full implementation of the Guidelines. While the rapid change and the variation in the rate of change from site to site make it difficult to study the implementation of the Guidelines, such variation also creates a natural experiment from which to draw valuable information.

Variations in the Process

Although all divorces in Canada are governed by the *Divorce Act*, and there is basically one general divorce process, the report highlights a number of issues related to differences in the availability of information which can affect how a couple may experience the divorce process, legal advice or administrative procedures that can help or hinder divorcing couples through the process. Further, the report highlights the importance of administrative supports in ensuring

consistent treatment of spouses and children. These factors vary among study sites and even within some jurisdictions. Therefore, the processing of divorce cases varies widely in different parts of the country.

Importance of Administrative Procedures

The report illustrates the importance of using standardized administrative procedures in implementing the Guidelines. Particularly important is the use of standardized court order forms to collect and list Guidelines information. In locations where standard procedures and forms have been implemented, the use of the Guidelines is virtually universal.

Importance of Having the Judges Commit to the Process

In locations where key judges actively support the Guidelines, implementation seems to be occurring faster. Practice directives from Chief Judges seem to be very effective in supporting the use of the Guidelines.

Highlights of the preliminary findings of Phase 2 data are presented below:

Case Characteristics

- A total of 5,864 cases were analyzed for this report.
- The majority of orders (78.8 percent) were interim or final divorce orders or judgments and 18.4 percent were interim or final variation orders.
- The disposition of the majority of cases was by consent or uncontested (84.6 percent); 14.9 percent of cases were reported as contested.
- The majority of cases reported legal representation for at least one parent (87.7 percent); the mother was reported as having legal representation in 76.3 percent of cases and the father had legal representation in 63.9 percent of cases.
- The most frequent type of access reported was "reasonable/liberal" (54.1 percent), followed by "scheduled/specified" (21.5 percent).
- A total of 9.6 percent of the cases had a spousal support amount, the majority of which were payable monthly.
- The majority of cases included either one (40 percent) or two (44 percent) children.
- In the majority of cases (79.4 percent), the mother had sole custody, while the father had sole custody in 8.3 percent of cases. Shared custody, where a child spends at least 40 percent of the time with each parent, and split custody, where one or more children have primary residence with the mother and one or more children have primary residence with the father, were relatively infrequent at 5.1 percent and 4.7 percent, respectively.

Child Support Awards and Paying Parent Incomes

- Data were available on monthly child support award amounts for a total of 4,620 cases, representing 78.8 percent of the total. Across all cases, monthly child support amounts ranged from $1 through $8,366.

- In 54.9 percent of cases, the file indicated that the Child Support Guidelines were followed in determining the child support award amount. The second most frequently reported method for determining child support was that a prior order or agreement dealt with child support (9.5 percent).

- When total child support award amounts were examined in relation to the recorded amount from the Child Support Guidelines tables as provided in the order or judgment, the majority of awards were either the same as (59.4 percent) or greater than (34.2 percent) the table amount. Only 6.4 percent of cases reported award amounts less than the table amounts.

- Annual income for the paying parent was specified in 75.5 percent of cases and ranged from $144 through $1,100,000 with a median income of $35,353. Annual income for receiving parents was specified in 43.2 percent of cases and ranged from $444 through $304,660 with a median of $24,000.

- When the amount of child support awards was examined in relation to the income of the paying parents, the results indicated a steady increase in child support awards as paying parents' income increased.

Special or Extraordinary Expenses: Section 7

- In the total sample, 31.2 percent of cases indicated that special or extraordinary expenses were awarded.

- Of the cases that had the monthly amount of the paying parent's share of special or extraordinary expenses specified, the amounts ranged from $2 to $1,500.

- The most commonly awarded type of expense was child/day care expenses (11.6 percent of total cases). This was followed by medical/dental insurance premiums at 11.1 percent, and health-related expenses at 10.3 percent.

- There was a strong tendency for the proportion of cases with special or extraordinary expenses awarded to increase as income level increased. At the lowest income level, only 16 percent of cases had special expenses awarded; this proportion increased to 46.4 percent in the middle income range ($45,000 – 59,999) and to 49.1 percent at the highest income level.

- There was a consistent increase in the amount of special expenses awarded as income levels increased.

Undue Hardship: Section 10

- Undue hardship applications were identified in only one percent of the total cases in the sample.

- Of the 49 undue hardship applications brought by the paying parent, 35 resulted in a decrease of the Guidelines amount; 8 were denied; none resulted in an order amount higher than the Guidelines amount; and the outcome of 6 applications was unknown or missing.

- Of the seven undue hardship applications by the receiving parent, one resulted in an increase of the Guidelines amount; three were denied; and one resulted in an order that was less than the Guidelines amount. The outcome was unknown in two cases.

Variations

- In 48.6 percent of variation cases, the applicant was the receiving parent. The paying parent was the applicant in 45.3 percent of variation cases, and in 6.2 percent of cases, parents were cross-applicants (that is, both parents were applying for a variation).

- Out of the cases in which a reason for the variation application was given, the most common reason was the implementation of the Guidelines (27.9 percent). This was followed by change of custody (10.8 percent), change in income (8.6 percent), and child independent (7.9 percent).

- Of variation applications brought by the receiving parent, 53 percent resulted in an increase of the face-value amount; 24.8 percent resulted in a decrease; 1.2 percent resulted in a termination order; and 0.6 percent were denied.

- Of variation applications brought by the paying parent, 8.9 percent resulted in an increase of the face-value amount; 63.6 percent resulted in a decrease of the face-value amount; 12.1 percent resulted in a termination order; and 3.5 percent were denied.

1.0 INTRODUCTION

In 1990, the Federal-Provincial-Territorial Family Law Committee began a study to address widespread dissatisfaction concerning the determination of child support. On behalf of the Committee, the Department of Justice Canada undertook a four-year program of research to create a formula for determining child support award amounts in cases of family breakdown.

On March 6, 1996, the federal government announced its policy intentions regarding child support. The four initiatives announced were:

1) to implement child support guidelines;

2) to change the tax treatment of child support;

3) to improve the enforcement of support orders; and

4) to increase the allowance to working low-income families through the Working Income Supplement (WIS).

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*. (The amendments to the *Income Tax Act* concerning the tax treatment of child support payments also took effect on May 1, 1997.) The amendments to the *Divorce Act* require the Minister of Justice to review the operation of the Guidelines and report to Parliament before May 1, 2002. Over the next two years, the Department's program of research must include preparation of a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms has established a Research and Evaluation Subcommittee to assist in the development of the comprehensive program of socio-legal research to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way award amounts are calculated under the Guidelines, the Task Force and Research Subcommittee members agreed that the first research priority should be to collect information about support orders and variation orders made on or after May 1, 1997. This project will provide some early indications about the implementation of the Guidelines, and provide for ongoing or periodic collection of information from the courts until the end of the initiative in March 2001.

Phase 1 of this project began in December 1997 and ended in October 1998. This pilot phase consisted of three tasks. Task 1 was managing the initial phase of the data collection process. Task 2 was the management and preparation of data received from participating courts into a computerized database. Task 3 was to analyze the collected data. The Canadian Research Institute for Law and the Family (CRILF) was contracted to complete Tasks 1 and 3.

This report summarizes the preliminary findings from Phase 2 of the project which began in the fall of 1998. The report is divided into two parts. Part 1 describes the processing of divorce cases involving child support orders and documents issues related to that process at the different sites involved in the project. Part 2 presents the results of the analysis of the data collected from the fall of 1998 through May 31, 1999. Data were collected at each participating jurisdiction on all divorce cases involving children.

PART 1: DIVORCE AND THE PROCESSING OF CHILD SUPPORT ORDERS

2.0 INTRODUCTION

2.1 Study Approach

The information in this part of the report was obtained from a variety of sources. These sources include site visits, telephone interviews and written materials provided by the various jurisdictions. The court sites involved in the study were:

- St. John's, Newfoundland;
- Charlottetown and Summerside, Prince Edward Island;
- Halifax, New Glasgow, Sydney, Truro, and Yarmouth, Nova Scotia;
- Fredericton, New Brunswick;
- Ottawa, Toronto, and London, Ontario;
- Winnipeg, Manitoba;
- Saskatoon and Regina, Saskatchewan;
- Edmonton and Calgary, Alberta;
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

As Quebec's system of determining child support awards differs from other Canadian jurisdictions, a separate study was designed to collect and analyze its data. Therefore, there are no Quebec data presented in this report.

This part of the report presents a brief overview of the study sites as of July 1999 based on the sources listed above. Section 3.0 discusses the type of court structure and the provincial or territorial legislation related to divorce and child support. Section 4.0 contains a detailed description of the process of granting a divorce and related matters such as child support. Section 5.0 presents issues related to the administration of divorce and child support orders and similarities and differences among the sites are discussed.

2.2 Limitations of the Study

The findings presented in this part of the report are subject to limitations. The major limitations are briefly discussed here.

Constant Change

Most of the sites involved in this study have formally implemented the Federal Child Support Guidelines. However, some procedures, policies and practices are still evolving. Different sites are at different stages in implementing the Guidelines, and the approach at specific sites is often unique. This limits our ability to directly compare the sites and suggests that the picture we have of any one site may not be valid for very long. The information contained in Part 1 represents

the situation at most sites as of July 1999. In some cases, information after July 1999 was available and is included.

Variations in the Source of Data

The amount of information available for this report varies greatly by study site.

3.0 LEGAL CONTEXT OF DIVORCE AND IMPLEMENTATION OF THE FEDERAL CHILD SUPPORT GUIDELINES

Court systems that handle legal action regarding divorce and child support can vary depending on the jurisdiction. These systems can be broadly identified as either a two-tiered system or a Unified Family Court system. In the traditional, or two-tiered system, matters under the federal *Divorce Act* are addressed in a Superior Court by a federally appointed judge (*Constitution Act*, section 91). The Superior Court hears divorce actions and related corollary relief matters (including child support, spousal support, and custody or access) and can also address property issues under provincial or territorial legislation. In a two-tiered system, a provincial or territorial court judge can also hear child support, spousal support, and custody or access if they are not part of the divorce proceedings. However, the provincial or territorial court cannot deal with property issues.

In a Unified Family Court, the Court hears all family-related matters whether under provincial, territorial or federal legislation.

3.1 Types of Courts

As Table 3.1 indicates, as of July 1999, six of the study sites had a two-tiered court system. The six sites are Toronto, Edmonton, Calgary, Victoria, Whitehorse, Yellowknife. St. John's and most locations in Saskatchewan use the Unified Family Court system, but some other locations in Newfoundland and Saskatchewan use the two-tiered system. In Saskatchewan, the Family Law Division (a Unified Family Court) of the Court of Queen's Bench has exclusive jurisdiction in Saskatoon and Regina. London and Ottawa likewise use only the Unified Family Court system as do five other locations in Ontario. New Brunswick, Prince Edward Island, and Manitoba have province-wide Unified Family Courts, and the Unified Family Court has recently been expanded in a number of locations across Canada. In Nova Scotia, Halifax and Cape Breton have the Family Division of the Supreme Court, a unified court system.

Table 3.1: Types of Courts and Court Titles by Study Site (as of July 1999)

Study Site	Two-tier System	Unified Family Court	Courts dealing with matters under the *Divorce Act*
St. John's, NF		X	Supreme Court Trial Division
All Sites, NS		X	Family Division of the Supreme Court of Nova Scotia
All Sites, PEI		X	Court of Queen's Bench, Family Division
Fredericton, NB		X	Court of Queen's Bench, Family Division
Ottawa, ON		X	Superior Court of Justice, Family Court (September 1999)
Toronto, ON	X		Superior Court of Justice
London, ON		X	Superior Court of Justice, Family Court
Winnipeg, MB		X	Court of Queen's Bench, Family Division
Regina and Saskatoon, SK	X	X	Court of Queen's Bench, Family Law Division (Regina and Prince Albert)
Edmonton and Calgary, AB	X		Court of Queen's Bench
Victoria, BC	X		Supreme Court of the Province of British Columbia
Yellowknife, NWT	X		Supreme Court of Northwest Territories
Whitehorse, YK	X		Supreme Court of Yukon

3.2 Provincial and Territorial Legislation and Practice

In addition to the type of court, provincial or territorial legislation and judicial practice may affect the process of divorce and the use of the Guidelines. As of July 1999, most provinces had enacted legislation adopting the Guidelines or are planning to do so. The Yukon is in the process of enacting legislation. Quebec has enacted legislation defining its own guidelines which use a different model and apply to proceedings under both the federal *Divorce Act* and provincial legislation. Only Alberta has not yet given a clear indication whether it will adopt the federal Guidelines in provincial legislation. If a province or territory has drafted its own child support guidelines and the federal government has designated them, the only time they do not apply in cases of divorce is when the parents live in different jurisdictions.

The importance of judicial practice in encouraging the use of the federal Guidelines should not be overlooked. Although Alberta has not formally enacted legislation to adopt the Guidelines for child support cases that do not involve divorce, most provincial Family Court and Queen's Bench judges appear to be using the Guidelines to deal with child support applications under provincial law. In the Alberta Court of Queen's Bench, this can be attributed to a practice directive from the Chief Justice requiring that specially created child support information and data sheets be submitted with all child support applications.

Although paragraph 11(1)(b) of the *Divorce Act* requires that before granting a divorce the court must "satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines," it is difficult to determine how actively judges scrutinize child support arrangements in situations involving consent agreements or uncontested applications. In Edmonton, Child Support Centre staff must review all consent orders involving child support and all uncontested cases of divorce ("desk divorces") involving children, as well as contested applications brought by unrepresented parties. In Calgary, only divorce judgments are reviewed, not consent orders.

Most jurisdictions require financial statements in contested divorce cases involving children. The legal requirement is usually established by the Rules of Court or Practice Rule.[1] In the Northwest Territories and Nova Scotia, practice directives require the use of financial statements. Only Prince Edward Island and Newfoundland require financial statements through their provincial Family Law Acts and the Northwest Territories is considering a move in this direction. Under the Yukon Divorce Rules, financial statements must be filed if there are children of the marriage. In Manitoba, financial statements must be filed when a petition is filed if support is requested. Only in Alberta must specially created child support information and data sheets (which include forms for Guideline income and the calculation of child support under the Guidelines) be filed in all cases to allow scrutiny of consent orders and uncontested desk divorce applications. In many sites, it does not appear that financial statements are always required in cases involving consent agreements or orders, or uncontested applications.

4.0 PROCESS OF DIVORCE AND ANCILLARY MATTERS

The process of divorce can be broken down into three general stages:

- marriage breakdown;
- pre-petition stage; and
- divorce proceeding.

Each of these stages involves a series of decisions on the part of one or both spouses. The divorce can be completed rapidly, or can take years if the parties separate and take no further action until one party wants to remarry.

Figure 4.1 provides a model of the divorce process. This model is general enough to accommodate most variations in how divorce cases are handled across Canada. In Section 5.0 we will see how various factors, which differ in the jurisdictions involved in this study, affect the general process.

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[1] In Alberta, the Rules of Court and Practice Notes provide for the filing and serving of a Notice to Disclose. The practice of the Court is to strictly enforce the remedies, including costs, in the event of non-compliance.

Figure 4.1: The Process of Divorce

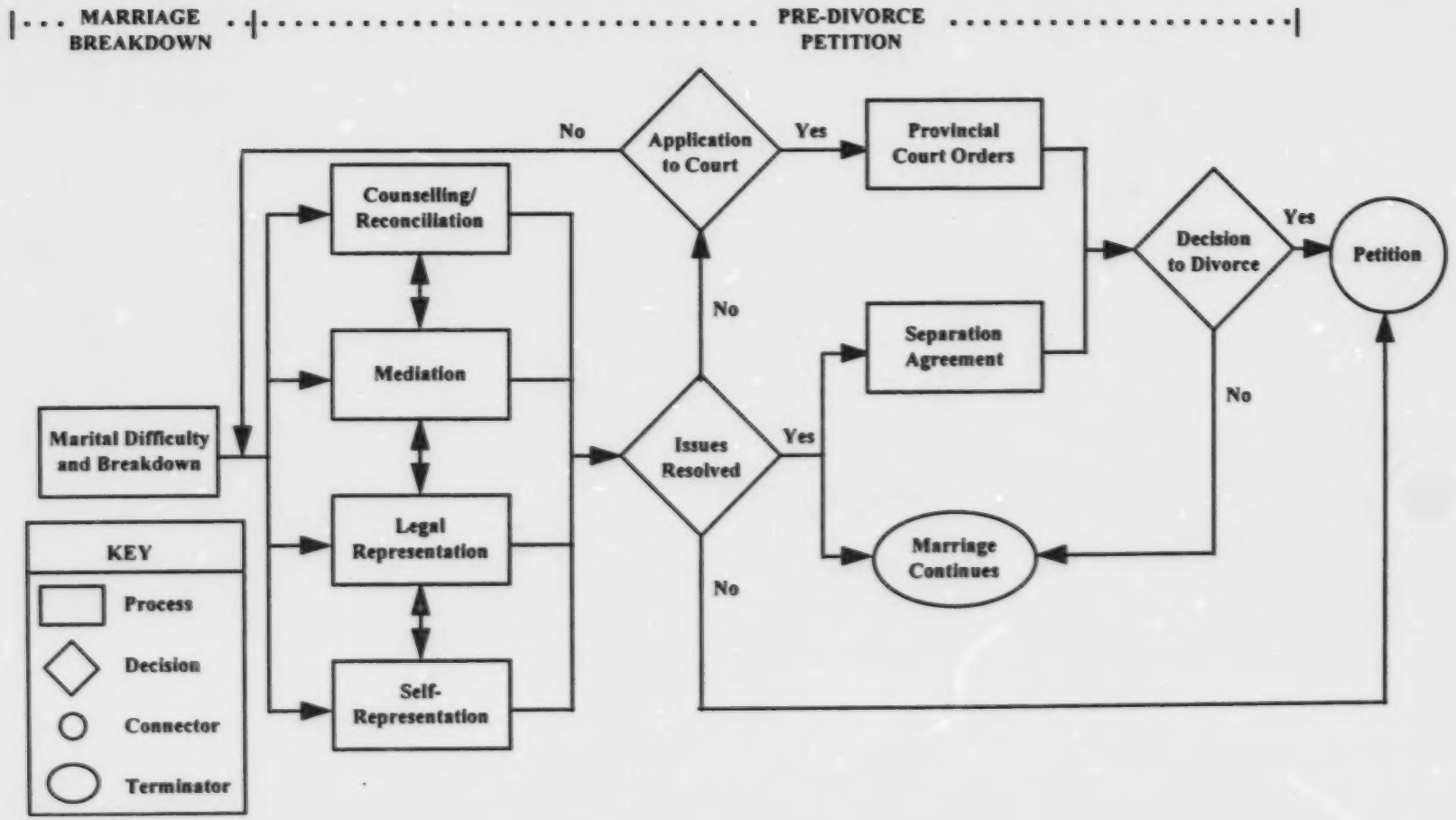
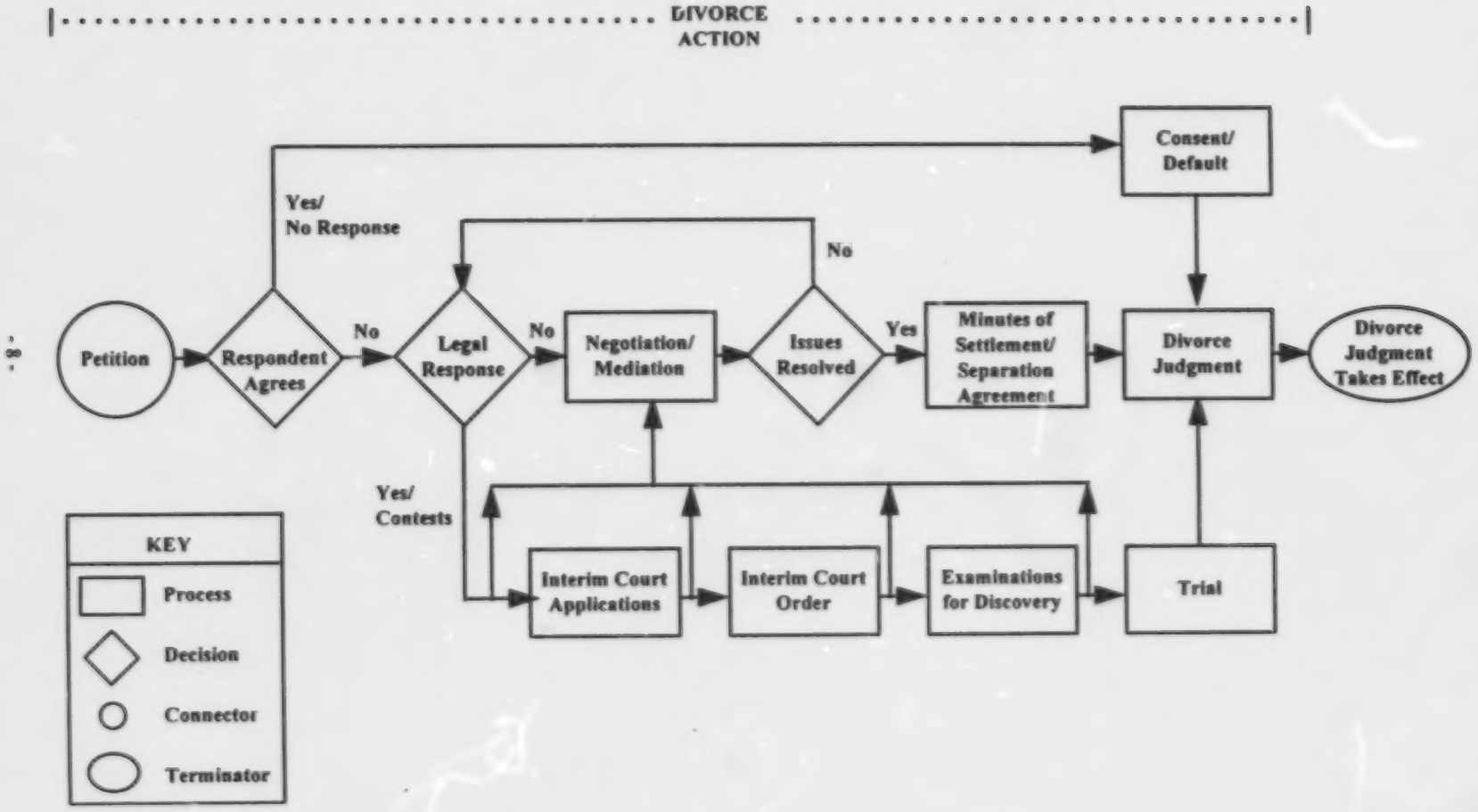


Figure 4.1: The Process of Divorce (continued)



4.1 Marriage Breakdown

The *Divorce Act*, which governs the process of divorce in Canada, provides that the basis for divorce is a "breakdown of the marriage." Breakdown is established when one or more of the following occurs:

1) the spouses have lived separate and apart for at least one year;

2) one spouse committed adultery; or

3) one spouse treated the other spouse with physical or mental cruelty.

As Figure 1 indicates, the divorce process begins with marriage breakdown occurring for any number of reasons. However, at the petition stage, one of the three indications of breakdown of marriage must be used as the grounds for divorce.

4.2 Pre-petition Stage

The pre-petition process may involve several stages and decisions. Actions taken at this early stage set the framework for subsequent decisions. During the separation, couples often resolve many of the legal issues related to their marriage breakdown by separation agreements or interim court orders which are later incorporated into the final divorce order.

When marital problems arise, the couple may try marriage counselling or private discussion. If either approach is successful, the marriage may continue. Alternatively, the couple may find that the issues are unlikely to be resolved or that they no longer wish to try to resolve them. At this point, the couple may decide to physically separate.

Once a couple decides to separate, they must then decide whether to take further action.[2] If the couple is childless and has no significant property issues, the husband and wife may simply go their own ways. Often no formal action is taken unless a separated spouse wishes to remarry, which may occur years later.

Even when the separation is relatively amicable, the parties may wish to formalize the details of the separation. This is especially true when children, substantial assets, or significant debts are involved, or when one spouse requires financial support from the other for him or herself or the children of the marriage. At this point, one or both may consult a lawyer. A family court counsellor, a court conciliator, or a mediator may also be consulted. Occasionally, information or advice obtained at this stage results in an attempt at reconciliation. In fact, section 9 of the *Divorce Act* requires legal advisors to discuss the possibility of reconciliation with their clients and advise them about reconciliation support services.

If reconciliation is not possible, but the couple can agree on the resolution of all issues, a separation agreement will usually be prepared. Each spouse is advised to obtain independent legal advice before signing such an agreement. Agreements are often negotiated between the two lawyers. If an agreement is not reached, the lawyers may refer the couple to a mediator who

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[2] In Canada, a couple may live "separate and apart" in the same residence if they cease to live as a "family unit," suspending sexual, economic, and social ties. However, this is very rare.

tries to assist the spouses in reaching an agreement regarding one or more issues. Some separated spouses consult a mediator before seeing lawyers. If mediation results in an agreement, the parties should be referred to lawyers before signing the agreement. If the agreement has been signed, the parties may begin divorce proceedings immediately or they may do nothing further until one or the other wishes to divorce to allow, for example, remarriage.

If the parties cannot agree, applications can be made to the court to resolve the various issues between them. Each province and territory has legislation permitting the courts to deal with issues of custody, child support, spousal support, possession of the matrimonial home and division of property. Sometimes a court order under provincial or territorial legislation resolves all the issues between the parties, and the terms of the order can be incorporated into a separation agreement. The separated parties may then choose to do nothing further unless one of them wishes to remarry. Alternatively, if the issues are not resolved at this stage, one or both parties may wish to file a petition for divorce.

If the separation took place unilaterally, one or both spouses often seek legal advice immediately. An application may be made to the court for an interim order dealing with custody, support, and possession of the home even before negotiations begin. Sometimes, a spouse may have sought legal advice prior to separation and may initiate interim court proceedings immediately upon separation.

In the majority of cases, the parties proceed with a legal divorce. There may be one or more court orders or consent orders, a separation agreement, or only a verbal understanding between the parties prior to the filing of a divorce petition.

4.3 Divorce Proceeding

Divorce proceedings technically commence when one or both spouses (joint petition) file a petition (or application) with the court. The petition usually describes the length of the marriage, the legal grounds for seeking the divorce, the income and assets of the applicant spouse, and the children of the marriage. Orders for custody and support of the children and spousal support are also proposed. Applications for property division, which are governed by provincial or territorial statutes, are often joined with the divorce petition. Some provincial or territorial rules require an application for property division to be made in separate documents, but permit it to be heard at the same time as the divorce petition. Other jurisdictions' rules permit property claims to be included directly in the divorce petition. Occasionally, an application for property division has already been made and decided before the divorce proceedings begin.

In all jurisdictions, spouses can file a petition before a one-year separation is completed, though the divorce cannot be granted until one year of separation, if that is the ground for divorce. Once the petition has been filed in court, it must be served on the respondent. The respondent then has a specified time in which to answer the petition.[3] If the parties have already entered into a separation agreement and the order requested in the petition incorporates the terms of the agreement, a response is usually not filed. Similarly, when the respondent agrees with the petition (or does not wish to actively contest it), a response is not filed, even if there are no

[3] There are provisions for a "substitute service" (e.g., publication of a newspaper notice) in cases where a respondent cannot be located.

previous orders or agreements. This type of divorce is referred to as "uncontested."[4] The petition can then proceed without an oral hearing in most jurisdictions. A judge reviews the documents and makes a divorce judgment. If neither party appeals the divorce judgment, it takes effect in 31 days. If there is an order regarding matters such as child support, custody, and access as part of the judgment, this part of the judgment may take effect immediately.

If the respondent files a legal response to the petition, then the petitioner is also given an opportunity to respond to that. Negotiations often take place at this point and mediation or other forms of alternative dispute resolution may also occur.[5] If the issues in dispute can be resolved, "minutes of settlement" or a separation agreement may be drawn up or the parties may agree to the terms of the orders to be included in the divorce judgment, and the divorce will proceed as if it were uncontested. A respondent may wish to attempt negotiations before filing a response. If negotiations are successful, any resulting written document is usually called a separation agreement (or minutes of settlement). If issues are not resolved, an answer is filed and the divorce is then contested.

If issues cannot be quickly resolved, it may be necessary to apply for interim orders for matters such as custody, child and spousal support, or possession of the matrimonial home, especially if the divorce proceedings are likely to be lengthy or if there is a need for financial support (which is usually the case if there are children). In urgent cases, "interim" interim hearings are held. Examinations for discovery will be held to provide each side with an opportunity to examine the other party under oath in preparation for trial; each spouse is questioned by the other's lawyer for this purpose. If there is a dispute regarding custody or access to the children, an assessment by a psychiatrist, psychologist, or a social worker may also be done. As an assessment and examinations for discovery proceed, or more typically after they are completed, negotiations may begin or continue and minutes of settlement or a separation agreement may result and the divorce may proceed as if it were uncontested. If the parties enter into a separation agreement at any point, they may file a document with the court indicating that it will proceed by consent which, in most jurisdictions, does not require an oral hearing.

Failure of negotiations after examination for discovery usually results in a trial, where each party presents evidence on each of the issues in dispute. The final decision is made by the judge. The judge's rulings on child support and other issues are included in the divorce order and, if no appeal is filed, the divorce takes effect 31 days later.

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[4] In Alberta, the respondent will often file a Demand of Notice when the divorce is not contested. This is not a defence, but a response that ensures that he or she is notified of every application.

[5] In Saskatchewan, after the parties have indicated that they are ready to proceed to trial, a pre-trial hearing conducted by a Judge of the Court of Queen's Bench (who will not be the trial judge) must be held. This hearing is attended by the parties and their counsel, and its purpose is to mediate a settlement or, if this cannot be done, to obtain agreement on as many issues as possible to reduce the length of the trial. Pre-trial conferences are also held in St. John's, Nova Scotia, Manitoba, Alberta, and at some locations in Ontario. In Ontario, a revised set of Family Court rules were to come into force in all Unified Family Court jurisdictions in the fall of 1999. The new rules introduce a system of judicial case management for all family cases. Under the new rules, the parties involved in contested cases are required to take part in three types of pre-trial conferences: (1) a case conference; (2) a settlement conference; and (3) a trial conference. In the Yukon, a pre-trial conference or settlement conference is available and usually is used if the parties are represented by counsel.

5.0 FACTORS AFFECTING CASE PROCESSING

A number of factors may affect the process of divorce and the determining of child support in Canada. These factors, which relate to the broader issues of information, advice, and the administration of proceedings, vary considerably from site to site in this study, and they are analyzed below.

5.1 Information on Separation and Divorce

The amount, source, and accessibility of basic information for the public regarding divorce and child support varies across the study sites.

Public Information Services

In addition to the information packages on the Federal Child Support Guidelines and other materials provided by the federal government for distribution by the provincial and territorial governments, at most sites information has been provided directly to the public by the specialized child support units or indirectly through local public legal education groups. Public information meetings have been held in Winnipeg, Edmonton, Yellowknife, Whitehorse and throughout New Brunswick, Saskatchewan, and Ontario. These information services are, for the most part, provided by public legal education programs or designated professionals (see Sections 5.2 and 5.4 below).

Divorce kits with standard forms, which include child support information, are almost universally available. In many jurisdictions they are provided by the public legal education groups; in others they are developed and sold by private bodies. For example, in St. John's, Newfoundland they are sold by the Women's Centre, whereas they are sold by private companies in Ontario, Alberta, and British Columbia and are available at stationery stores. In Nova Scotia, these kits are being developed by the Public Legal Education Association of Nova Scotia with court services funding. It appears that many of the kits prepared by private companies have been updated to include information on the Guidelines. Most of those prepared by court services or non-governmental agencies have also been updated. The divorce self-help kit in Saskatchewan has been updated to include the Guidelines and is available for $25 at Court of Queen's Bench locations. As part of the Child Support Guidelines initiative, both Saskatchewan Justice and British Columbia's Ministry of the Attorney General developed free variation kits, to help parents vary their child support orders without counsel.

A number of the sites have telephone law lines; however, these lines differ in a number of ways. In Prince Edward Island, a nominal fee is charged for use of a law line and the clients can be given both information and a referral to a lawyer. In Alberta, there is a toll-free Dial-a-Law and Lawyer Referral Line, which provides the public with information and up to three referrals to lawyers specializing in the caller's matter. These lawyers may provide up to 30 minutes of free consultation through this service before requiring a retainer. The Faculty of Law at the University of Alberta offers divorce clinics through its Student Legal Services for a small fee. In Calgary, divorce clinics are offered by lawyers on a *pro bono* basis through Calgary Legal Guidance. In Manitoba, the Community Legal Education Association operates lawyer referral lines and legal information lines staffed by paid lawyers. In Yellowknife, the law lines are free, but they operate mainly as a referral system and are staffed by volunteer lawyers. Saskatchewan

has a toll-free line that provides free information to the public about the Guidelines. A lawyer referral line dealing specifically with Guidelines issues has also been established by the Law Society and paid for by Saskatchewan Justice. Through this referral line, people can meet with a family law lawyer for half an hour or more to discuss their situation for a nominal fee. In Whitehorse, the law line is accessible to all Yukon communities and is staffed by one full-time lawyer. In Nova Scotia, there is a Child Support Guidelines information line providing basic information and lawyer referrals. In British Columbia, a toll-free line of taped information on the Guidelines is available, and the British Columbia Branch of the Canadian Bar Association operates a lawyer referral service (which offers half an hour of a lawyer's services for $10.00).

5.2 Child Support Guidelines Resources

All of the study sites have designated staff to provide services relating to the Guidelines. Most of these positions are jointly funded by the province or territory and the Department of Justice Canada. However, the services provided and how they are delivered vary. Three types of service provision models can be identified as follows:

1) services provided as part of court services offices;

2) services provided through partnerships with other agencies; and

3) services provided by distinct units or programs.

Services Provided through Court Services Offices

In most sites, court services staff provide information on child support. Nine of the provincial or territorial jurisdictions have implemented this type of model (as represented in this study by Halifax, Charlottetown, Fredericton, London, Toronto, Ottawa, Saskatchewan, Whitehorse, and Yellowknife). In this model, one to five staff are dedicated to work out of the court services office. Their functions include providing information to the public through general advertising, mail-outs, information sessions and telephone information lines, as well as providing information to individuals on request.

In some locations, such as Prince Edward Island and Ontario, the staff may also provide information directly to the court, to legal aid and to duty counsel. In Charlottetown, the child support officer prepares the final draft of the court order when the parties are not represented. In Saskatchewan, toll-free telephone line operators provide information and mail-outs, and also organize parent education sessions for the public. These operators are part of Family Law Support Services, a branch of Court Services.

In two locations, there are also government staff outside the court who deal with child support. In Prince Edward Island, there are two family support order program workers at the social assistance office who are mandated to help clients on social assistance deal with issues regarding the Guidelines. In Yellowknife, a worker at the maintenance enforcement office provides advice regarding variations (including tax issues).

Services Provided through Other Agencies

In Newfoundland and New Brunswick, information regarding the Guidelines is provided through partnership with other agencies. In Newfoundland, the Departments of Justice and Human Resources and Employment jointly fund 11 Support Application Workers across the province. The workers provide assistance to clients of social services who are involved in child support issues and also help the general public obtain or vary child support orders.

In New Brunswick there are no offices that specifically handle issues related to the Guidelines. However, in addition to the court-based services discussed above, a toll-free line available to the public for child support information is provided in partnership with the Public Legal Education and Information Service of New Brunswick.

In British Columbia, Family Justice Counsellors, who work in Family Justice Centres not located in the court house, provide mediation services to parents, with preference being given to low-income families. Also, the Ministry of Human Resources operates the Family Maintenance Program, which obtains child support orders on behalf of custodial parents who have assigned their rights to child support to the Crown.

Specialized Child Support Units

Winnipeg, Edmonton, Calgary and British Columbia have specialized child support units. These units vary considerably in their structure and functions.

In Winnipeg, the Child Support Guidelines Centre provides parent education services for separating and divorcing parents, as well as a Comprehensive Co-mediation and Mediation Internship Program, which provides an alternative to court action and an opportunity for professionals with appropriate mediation education to obtain practical mediation experience under the supervision of program specialists.

Edmonton and Calgary have Child Support Centres (CSC) located in the Court of Queen's Bench. The CSCs have two primary roles. The first is to assist the public, the legal community, and affiliated service agencies by providing information and material about the Guidelines and the court process. The CSCs have developed various court procedures booklets and information booklets to assist unrepresented parties with their Queen's Bench child support applications. The CSCs have also developed court procedure booklets for Queen's Bench family law applications dealing with issues such as custody and access, spousal support, arrears or stay of enforcement and restraining orders. Unrepresented parties must have their Child Support Information and Data Sheets (financial disclosure and child support calculations) reviewed by the CSC before they are permitted to file a contested child support application.

The second role of the CSCs is to assist the courts by providing legal research and consultation on specific issues pertaining to the Guidelines and family matters. The CSCs provide computer training on child support programs and make staff available during Family Chambers. They also review all applications for both consent orders for child support and desk divorces involving children prior to their submission to the judiciary, whether submitted by lawyers or by unrepresented parties. The files are reviewed with respect to calculations under the Guidelines, compliance with information requirements of section 13 of the Guidelines and the Alberta Rules of Court, and consistency and completeness of supporting materials and financial disclosure.

The Edmonton CSC also provides training and information sessions on the Guidelines to the North (Rural) Judicial Districts as well as providing training and information sessions on the review procedures for child support applications. In addition, the Edmonton CSC acts as a Friend of the Court for Queen's Bench Confirmation Hearings that confirm child support orders made in another jurisdiction in cases where one parent does not live in Alberta.

In British Columbia, child support clerks are located in Family Justice Centres. These clerks provide information to parents about the Guidelines, as well as dispute resolution options, and can help parents prepare court documents for child support applications.

5.3 Advice

The distinction between providing legal information and giving legal advice is critical. Only lawyers should be giving legal advice about a specific situation, and this should be directed to a particular client within the context of a professional relationship. It appears that most parties involved in divorces obtain legal advice at some point in the process. This includes privately retained counsel as well as lawyers paid by legal aid. Others may have obtained legal advice through telephone consultations usually referred to as law lines.

Legal aid has changed considerably in the last several years, and in the majority of jurisdictions legal aid resources are not available to those involved in family law disputes. While legal aid is still available for restricted purposes in many sites, it is usually not available for divorce proceedings. Legal aid is often available only for family law cases involving violence or other criminal matters.

The site interviews indicated that legal aid in divorce or support cases is currently available in all cases for people with low incomes in only four jurisdictions: Manitoba, Saskatchewan, Northwest Territories and Alberta. All of these locations perform "needs" testing to determine the financial means of their clients. In some sites in Newfoundland, Ontario and British Columbia, legal aid is available for people with low incomes in critical or urgent situations, such as those involving domestic violence. In Nova Scotia and the Yukon, needs-tested legal aid is available to the point where the client files the divorce petition. Only in New Brunswick are legal aid services available to all beneficiaries of child support without needs testing. However, these services are available in family cases only to the point where the client files a petition for divorce.

5.4 Education Programs for Separating Parents

While education programs for separating and divorcing parents are not formally linked to the Guidelines initiatives, these programs provide information regarding the Guidelines to separating and divorcing parents. There is great interest across Canada in programs that provide parents with information about the effects of separation and divorce on their children, as well as those that provide information about legal issues such as child support. Currently, programs are operating in St. John's, Halifax, London, Toronto, and throughout Manitoba, Saskatchewan, Alberta, and British Columbia. Programs are under development in several other sites.

Alberta and the Family Division of Nova Scotia are the only locations where the parenting education program is mandatory for all separating and divorcing parents prior to receiving a

court order. In British Columbia, a pilot project for mandatory parent education was implemented in 1998. The parenting programs in other jurisdictions are optional. However, in all locations judges may require parents to take a parenting program as a condition of custody and access.

The content of the programs is relatively consistent, including such topics as:

- stages of separation and divorce;
- effects of divorce on children;
- effects of divorce on parents;
- communication and relationship skills;
- information about other services, such as mediation and counselling; and
- legal issues.

Some programs, such as Alberta's "Parenting after Separation Seminars" and Manitoba's "For the Sake of the Children," have special sessions for high-conflict cases and cases where domestic violence may be an issue.

Most courses take between three and six hours in two or three sessions and are conducted as group presentations varying from ten participants to thirty or forty. In Halifax and London, the presenters are trained volunteers who have a professional background. In Saskatchewan, the facilitators for these sessions are from the Family Law Support Service Branch (Court Services) and Mediation Services of Saskatchewan Justice. In other provinces, the presenters are either salaried or paid on a fee-for-service basis.

Saskatchewan has also recognized that children experiencing their parents' separation or divorce could also be left confused, worried and unsure of their new family situation. To help children of separated and divorced families understand their situation, Saskatchewan Justice worked with a curriculum writer to develop a children's education program. A facilitator's guide for age groups six to nine, nine to twelve and twelve to sixteen was produced. The program addresses the legal process of divorce and separation as well as the emotional experiences and changes in the family relationships. Saskatchewan Justice also produced videos for children in the same age categories, to accompany the education curriculum, or to be viewed on their own.

The facilitator's manual and videos for children have been distributed to all provincial health boards, all young offender institutions in the province and a large number of helping agencies. Videos have been widely distributed to all of the regional library branches in an effort to ensure provincial circulation. Plans were also made to reach the education districts through the Department of Education in the fall of 1999.

5.5 Types of Divorce

Most divorces in Canada are uncontested and are granted without a personal appearance in court by either party. Only in St. John's must the petitioner appear before a judge, even in an uncontested divorce, in what is known as a "forthwith divorce." Uncontested divorces without a hearing are referred to as "paper divorces" in Nova Scotia and Saskatchewan; as "affidavit divorces" in New Brunswick, Prince Edward Island, Ontario, and Manitoba; and as "desk divorces" in Alberta, British Columbia, Yukon, and the Northwest Territories.

The other type of divorce found in all jurisdictions is a "trial divorce," which occurs when the granting of a divorce, or much more typically a corollary issue like child support, is contested. In St. John's, Newfoundland, Manitoba, and some of the locations in Ontario, pre-trial settlement conferences are conducted by a judge (other than the one who will conduct the trial) using a number of different dispute resolution techniques.

A number of sites also identify a third type of divorce. These are called "oral hearings" in Ontario and Manitoba and "chambers divorces" in Prince Edward Island, Saskatchewan, British Columbia, Yukon, and the Northwest Territories. In Alberta, it is called a "special trial." These proceedings are usually oral hearings, where at least one of the parties or their legal counsel appear. Evidence in most locations is generally presented by affidavit at these hearings.

5.6 Preparation of the Order

Once the judge makes a decision regarding the divorce and child support (called a Divorce Judgment in Figure 1), a written order must be prepared. In almost all the study locations, the legal counsel for the petitioner or respondent is responsible for drafting the interim or final order, which is then usually checked by a clerk. In some jurisdictions (for example, St. John's, Halifax, and Charlottetown), the clerk or child support officer prepares the interim or final order in cases where parties are not represented. In Whitehorse, the filing clerk ensures that specific pieces of information are included in the order.

Edmonton appears to be the only site where all forms of order for consent and uncontested desk applications (whether submitted by lawyers or unrepresented), are checked by the Child Support Centre staff against the Guidelines, and are checked to ensure compliance with section 13 of the Guidelines. The Centre provides a summary of the review, or a Review Memo, to the Justice. This Review Memo includes advising the Justice of any agreements to depart.

In over half of the jurisdictions where legal counsel prepares the draft order, the time lag between the divorce judgment and the filing of the order (issued and entered) can often be lengthy, taking up to eight or nine months. This, of course, does not nullify the divorce order, which takes effect 31 days after the divorce judgment.

The language of the orders is also problematic. While some of the language of the Guidelines seems to have been readily adopted (such as, sole and split custody), terms like "joint guardianship," "joint custody," and "joint legal custody" simultaneously appear in orders. While these terms usually refer to "joint decision making," their meaning is ambiguous.

Many jurisdictions have standard court order forms that have incorporated the requirements and language of the Guidelines (for example, St. John's, Edmonton, Halifax, and Saskatchewan). In Saskatchewan, the provincial *Family Maintenance Act* contains these forms. However, in the Family Law Division in Saskatchewan there is not a specific form, but there are practice directives issued. Other jurisdictions, such as Prince Edward Island and Manitoba, are revising order forms to incorporate the Guidelines. Manitoba is developing automated court orders to standardize and speed up the production of final orders. A number of other jurisdictions have expressed an interest in Manitoba's model.

6.0 CONCLUSIONS

Given the qualitative nature of the information used to produce this part of the report and the limitations of the study (identified in Section 2.2 above), it is difficult to draw firm conclusions. However, descriptions of the processes of divorce and child support orders across Canada lead us to some broad conclusions and some insight into what might be important for the successful implementation of the Federal Child Support Guidelines. Four general observations that can be derived from the information in this report are briefly discussed below.

Progress Towards Full Implementation

Based on site visits and follow-up telephone interviews, it is clear that staff at the study sites are strongly committed to the full implementation of the Guidelines. While the rapid change and the variation in the rate of change from site to site make it difficult to study the implementation of the Guidelines, such variation also creates a natural experiment from which to draw valuable information.

Variations in the Process

Although all divorces in Canada are governed by the *Divorce Act*, and there is basically one general divorce process, as described in Figure 1, the report highlights how differences in the availability of information and services and procedural variations can affect how a couple may experience the divorce process. Further, the report highlights the importance of administrative supports, such as Child Support Centre staff checking applications in Edmonton, in ensuring consistent treatment of spouses and children. These factors vary among study sites and even within some jurisdictions. Therefore, the processing of divorce cases varies widely in different parts of the country.

More consistency in treatment of cases involving children is one of the objectives of the Guidelines. How various aspects of the divorce process increase or decrease consistency should be an important component in any review of the Guidelines.

Importance of Administrative Procedures

This report illustrates the importance of using standardized administrative procedures in implementing the Guidelines. Particularly important is the use of standardized court order forms to collect and list Guideline information. In locations where standard procedures and forms have been implemented, the use of the Guidelines is virtually universal.

Importance of Having the Judges Commit to the Process

In locations where key judges actively support the Guidelines, implementation seems to be occurring faster. Practice directives from Chief Judges seem to be very effective in supporting the use of the Guidelines.

PART 2: PRELIMINARY ANALYSES OF PHASE 2 OF THE SURVEY OF CHILD SUPPORT AWARDS

7.0 INTRODUCTION

7.1 Study Approach

This part of the report presents a summary of the preliminary analyses of the first wave of data collected from Phase 2 of the Survey of Child Support Awards, and includes data entered into the database from the implementation of Phase 2 in the fall of 1998 through May 31, 1999. Section 8.0 discusses the methods used to collect the data for Phase 2. The findings are presented in Section 9.0, and include a descriptive analysis of the major data elements contained in the survey instrument and an analysis of factors related to child support awards. Appendix A contains a copy of the survey instrument and Appendix B contains the revised coding manual for the instrument.

8.0 METHODOLOGY

8.1 Research Design and Procedures

Following completion of the pilot phase of data collection for this project, a revised survey instrument was implemented that addressed several problems and issues identified during the pilot. As with the pilot survey on child support orders, the instrument used in Phase 2 was designed to record at each participating site all court decisions under the *Divorce Act*[6] involving children. Relevant data sources for completing the survey instrument included the following:

- all interim child support orders in divorce files;
- final divorce judgments that specifically incorporate separation agreements, minutes of settlement or previous court orders;
- final divorce judgments which are silent on child support even though children are involved;
- orders varying divorce judgments; and
- final divorce judgments that contain corollary relief orders.

In addition, it was discovered during the pilot phase that several other sources of relevant information for completing the survey instrument were available at certain court sites. The addition of a new item on the instrument allows for the identification of the documents that were used to collect the data.

The unit of analysis for this project is the individual court decision, not the individual case. In other words, a divorce judgment involving child support for which a variation order is later made would be included as two separate cases in the database.

All provinces and territories except Quebec collected data included in this preliminary analysis in at least one site. As Quebec's system of determining child support awards is different than

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[6] *Divorce Act*, R.S.C. 1985 (2nd Supp.), c.3.

other Canadian jurisdictions, a separate study was designed to collect and analyze its data. The sites that collected data for this analysis are:

- St. John's, Newfoundland;
- Charlottetown and Summerside, Prince Edward Island;
- Halifax, New Glasgow, Sydney, Truro, and Yarmouth, Nova Scotia;
- Fredericton, New Brunswick;
- Ottawa, Toronto, and London, Ontario;
- Winnipeg, Manitoba;
- Saskatoon and Regina, Saskatchewan;
- Edmonton and Calgary, Alberta;
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

The members of the Federal-Provincial-Territorial Task Force on the Implementation of Child Support Reforms Research Subcommittee selected the sites to be studied in their jurisdictions. The Subcommittee was also heavily involved in the design of the survey, and facilitated the site visits by the research team.

The contractor responsible for maintaining the database is Neurofinance, located in Montreal. Neurofinance has developed a computerized data input program that mirrors the paper survey instrument. The software has been made available to data capture clerks at all court sites and almost all sites are now using it for data capture. The few sites that are not currently using the software complete the printed questionnaires and then forward them to Neurofinance for data input. The data analyzed in this report is the version of the database received by the Canadian Research Institute for Law and the Family (CRILF) on July 14, 1999, and includes all valid cases (N = 5,864) entered in the database from the beginning of Phase 2 in the fall of 1998 through May 31, 1999.[7]

Figure 8.1 presents the number and percentage of cases included in this database by province or territory of origin. The majority of the total number of cases (35.1 percent) were from Ontario, followed by 30 percent from Alberta, 8.9 percent from Nova Scotia, and 7.3 percent from Manitoba. The large number of Ontario cases reflects the fact that this is the most populous jurisdiction participating in the project, as well as the fact that three court sites are participating in this province. Similarly, the large number of cases from Alberta is due to the fact that the two major urban centres, Edmonton and Calgary, are both participating. The jurisdictions with the fewest number of cases in the study are the Yukon (37), Northwest Territories (45), and Newfoundland (50).

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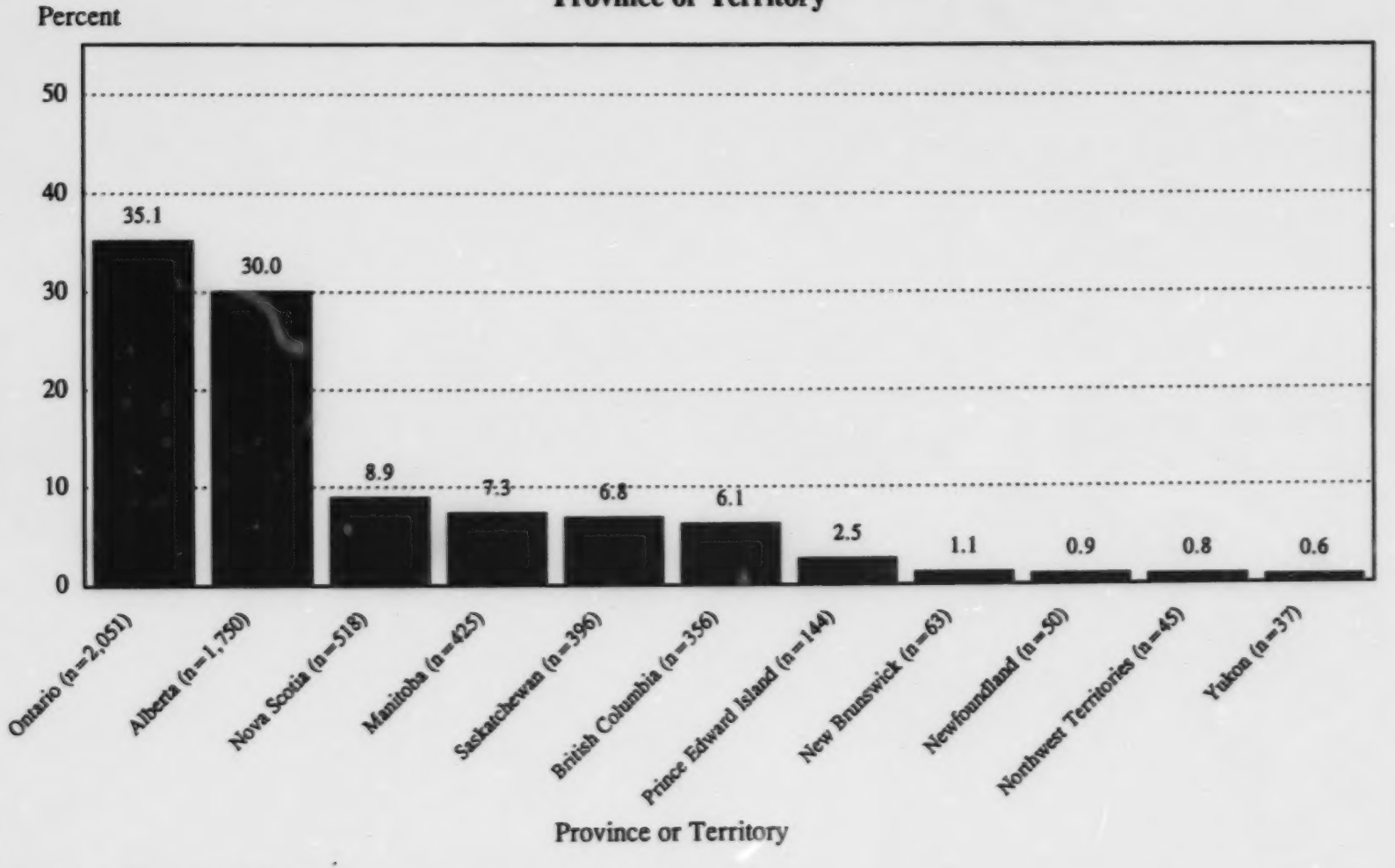
[7] A total of 423 cases were excluded from the database for purposes of the analyses presented in this report for the following reasons: cases indicating that the child support award amount relied on a previous order that was dated prior to implementation of the Child Support Guidelines on May 1, 1997 (n = 375; including 22 cases in which it was indicated that the award amount relied on a previous order but no date for this order was provided); cases representing variations resulting in termination orders with no child support awards (n = 2); cases relying solely on affidavits for data capture and not including information on whether the case represented a divorce or variation (n = 5); cases designated as "entry not finished" in the database (n = 40); and one case that, on manual inspection, appeared to be problematic.

Figure 8.1: Percentage of Cases from Each Participating Province or Territory



Total N = 5,864. Missing Cases = 29.

8.2 Data Quality Issues

One potential bias that should be acknowledged is the differing availability of information for completing the survey instrument across participating sites. At some sites, the file available to data capture clerks contains all the relevant documentation for a case, including any prior agreements or orders. At other sites, the available file contains only the final divorce judgment, which may be silent on child support because it was addressed in a previous agreement or order. While this could lead to some variables being underreported in the survey, it should not compromise the quality of the data that were available.

Though there was an attempt to train all data capture people and a standard coding manual is available, the fact that different people across the country are collecting the information required for the survey could affect data quality. Consequently, edits have been run against the data and follow-up with coders has been initiated to minimize this effect as well as other sources of error.

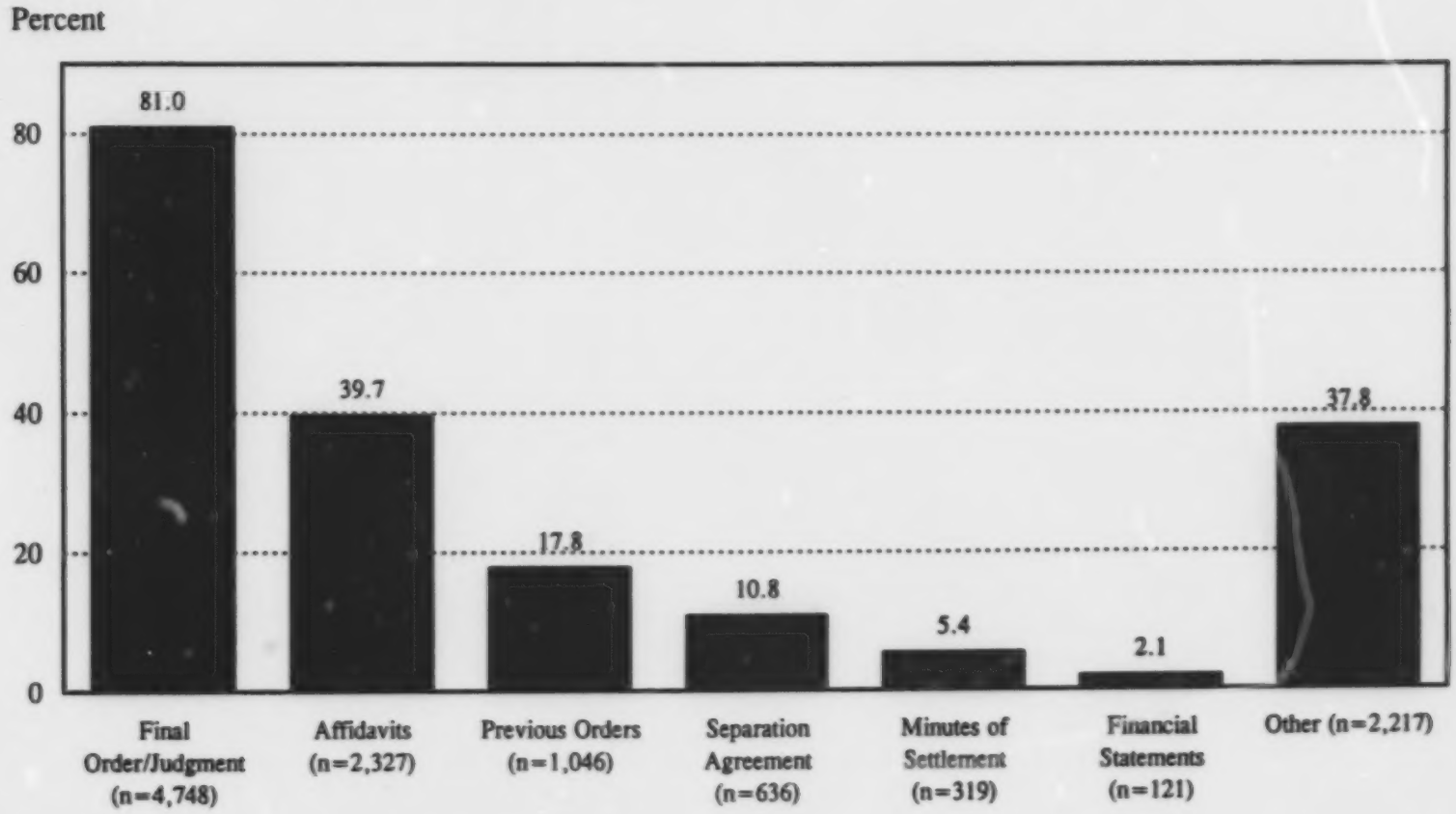
Figure 8.2 presents the source documents that were used to complete the instruments. The most frequent source of information was final orders and judgments, which were available in 81 percent of cases. Affidavits (39.7 percent) and previous orders (17.8 percent) were also frequently used in capturing data. Financial statements (2.1 percent) and minutes of settlement (5.4 percent) were least frequently used in data collection. Table 8.1 lists the most frequent combinations of source documents used to complete the instruments. The most common combination was "Final Order" and "Other" document (19.6% of cases with non-missing data), which represents a write-in comment. The most common write-in under other documents were "Data Sheets" followed by "Petition."

Table 8.1: Combinations of Source Documents Used to Complete Instrument[1]

Documents Used	n	%
Final Order/Other	1,072	19.6
Final Order Only	885	16.2
Final Order/Affidavit	879	16.1
Final Order/Separation Agreement/Affidavit	369	6.8
Final Order/Previous Order/Affidavit	322	5.9
Final Order/Affidavit/Other	300	5.5
Final Order/Previous Order/Other	281	5.1
Other Only	267	4.9
Final Order/Previous Order	162	3.0
Minutes of Settlement Only	78	1.4
Other Combination	850	15.6

[1] Total N = 5,864; Missing Cases = 399.

Figure 8.2: Source Documents Used to Complete Survey



Total N = 5,864.
Numbers do not equal total since more than one source document may be used to complete the survey.

Following revision of the survey instrument after completion of the pilot phase, representatives of the survey team made site visits to meet with most of the data capture clerks to conduct data capture training sessions early in the fall of 1998. Further, a revised coding manual was developed for the revised questionnaire that detailed the information to be coded for each item. A toll-free help line was maintained for data capture clerks to call if they have any questions regarding the appropriate way to code particular cases. In addition, many items on the instrument provide for write-in responses in cases where the pre-coded alternatives were inappropriate. Write-in opportunities were used quite extensively, and these open-ended responses were coded and included in the data analysis where appropriate.[8]

8.3 Data Analysis Strategy

This part of the report presents preliminary analyses of the database generated from the fall of 1998 through May 31, 1999. In cases where measures of central tendency are presented, both the medians (the point above and below which 50 percent of the cases fall) and the means (or average) are presented because the median is less sensitive to the effects of extreme scores. Medians only are presented in tables and figures. Regression was used in analyses involving continuous variables such as parent income and child support awards. It is anticipated that as the number of cases in the database increases over the course of the project it will be possible to analyze selected variables by province/territory. It is also expected that future analyses will enable examination of trends over time.

8.4 Limitations of the Study

The major limitation of the study is that the cases do not represent all child support cases in Canada. Therefore, results should not be generalized to the population as a whole or to individual provinces or territories, especially since, at the present time, some jurisdictions have relatively few cases in the database. A report recently completed by the Department of Justice Canada addressed the representativeness of the participating court sites in comparison with the jurisdiction as a whole on a limited range of variables and found quite acceptable levels of representativity.[9]

An attempt was made to exclude all cases in which child support was determined prior to the implementation of the Federal Child Support Guidelines on May 1, 1997. However, it is possible that a small number of these cases remain in the database. The presence of any such cases would have a minimal effect on the results presented in this section.

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[8] Due to the large number of write-in responses, any particular response that was given in fewer than five cases was not coded separately; instead, these responses were coded into a general "Other" category.

[9] Department of Justice Canada. *A Comparison of Selected and Non-Selected Court Sites and an Analysis of Representativity of Courts in the Central Divorce Registry Data Base*. Background Paper BP05E, 1999.

9.0 PRELIMINARY FINDINGS OF PHASE 2 DATA

9.1 Case Characteristics

Source of Child Support Order Information

Data capture clerks were required to determine whether each case represented a divorce order, a divorce judgment or a variation order. They were also required to indicate the type of judgment or order used. Of the 5,864 cases, 78.8 percent were interim or final divorce orders or judgments and 18.4 percent were interim or final variation orders.

Figure 9.1 presents a breakdown of the types of divorce orders or judgments used to complete the survey instrument. The most common type of divorce order or judgment used was a divorce order or judgment including a child support order at 47.3 percent, followed by a divorce order or judgment silent on child support at 33.5 percent.[10] Interim child support orders were reported in 12 percent of cases.

Of a total of 1,077 variations, a substantial majority (83.1 percent) were final variation orders, followed by 8.7 percent interim variation orders.

Disposition of Order

One item on the instrument asks for the final disposition of the order. Due to possible confusion regarding the distinction between "Consent" and "Uncontested" dispositions, these categories were collapsed. Only 866 (14.9 percent) cases with non-missing data (n = 5,829) on this variable were contested; 4,930 (84.6 percent) cases were coded as consent orders or uncontested and in 33 cases (0.6 percent), the disposition was unknown.

Legal Representation

In the majority of cases with non-missing data (n = 5,826), the mother was reported as having legal representation (4,443; 76.3 percent). Of cases with non-missing data for legal representation for the father (n = 5,812), the majority also had representation (3,712; 63.9 percent) although the proportion was not as high as with mothers. A total of 5,140 cases (87.7 percent) reported legal representation for at least one parent. Only 105 cases (2.5 percent of non-missing data) reported legal representation for a government agency.

Issues Dealt With in the Order or Judgment

Figure 9.2 presents the issues that were dealt with in the order or judgment. The most frequent issue dealt with was child support (72.5 percent of all cases), followed by custody (55.2 percent) and access (50.9 percent). Spousal support was an issue in approximately one-fifth of orders or judgments (20.7 percent).

Additional analyses were conducted to determine the most common combinations of issues that were dealt with in orders or judgments. These are presented in Table 9.1.

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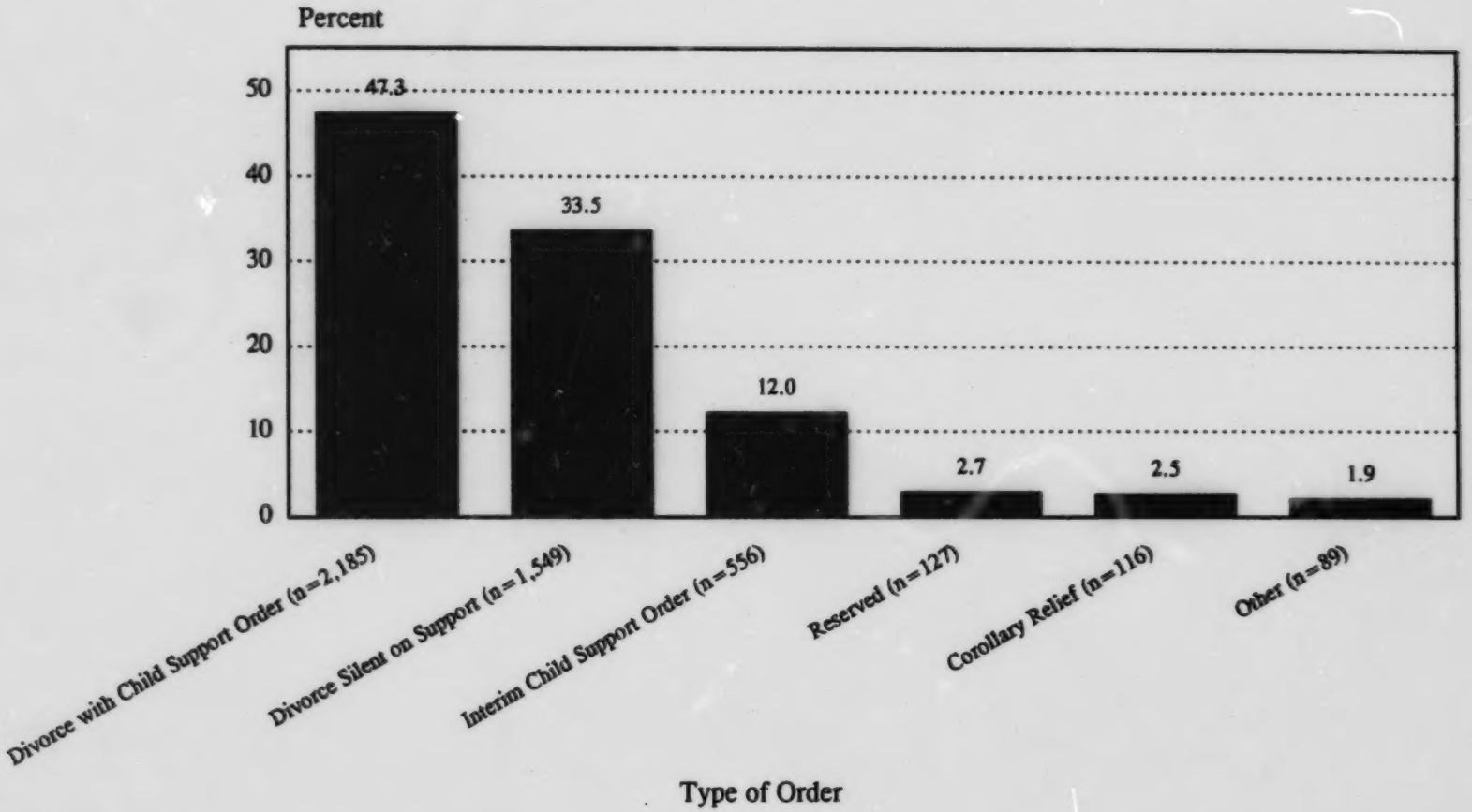
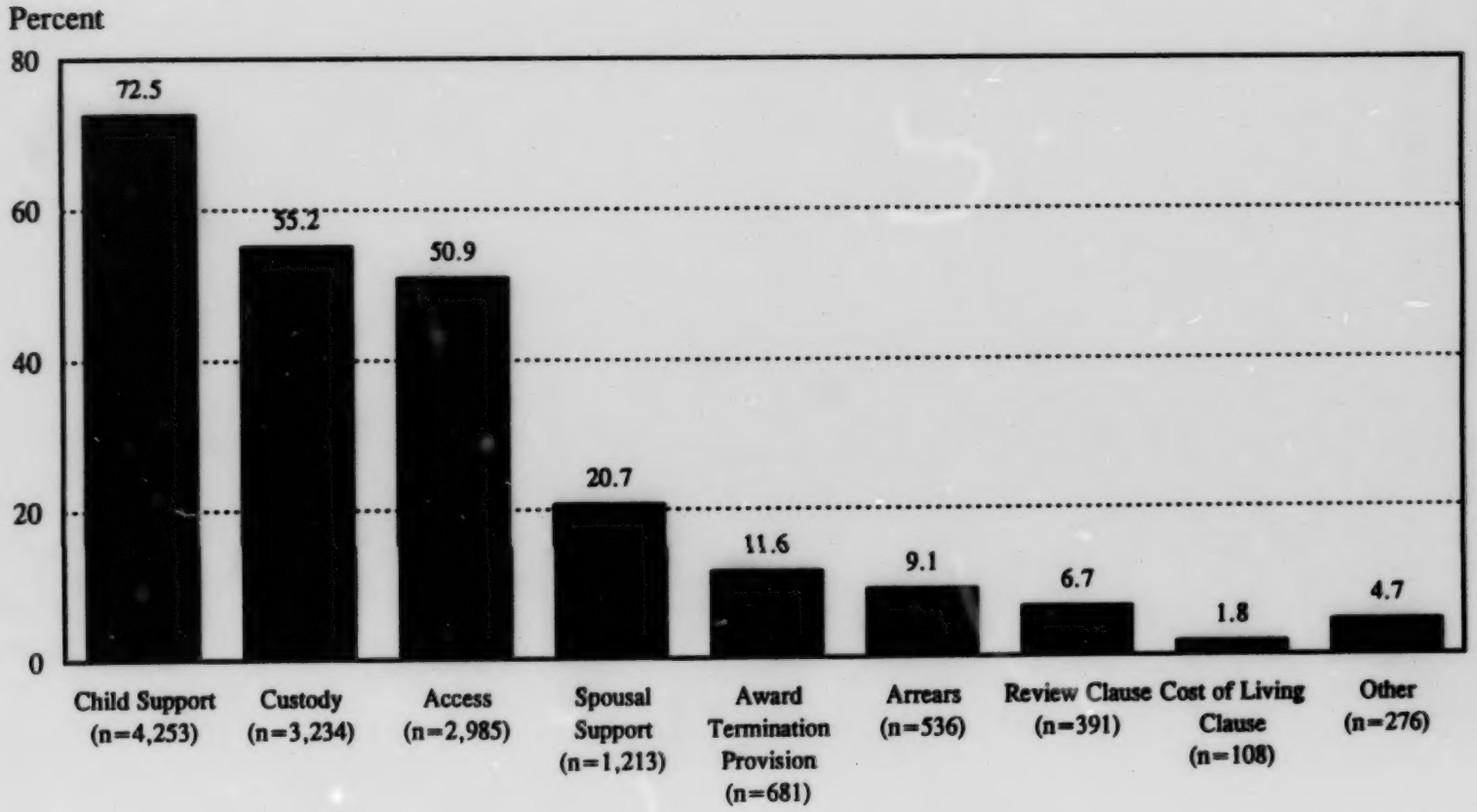
[10] The majority of these cases silent on child support are from Ontario.

Figure 9.1: Type of Order or Judgment Under the *Divorce Act*



Total Number of Divorce Orders = 4,622.
165 cases were missing data on both type of divorce order/judgment and type of variation order.

Figure 9.2: Issues Dealt With in Court Orders or Judgments



Total N = 5,864.
Numbers do not equal total since more than one issue may be dealt with in an order or judgment.

Table 9.1: Number of Cases Reporting Most Frequent Combinations of Issues Dealt with in Orders or Judgments[1]

Combinations of Issues	n	%
Child Support/Custody/Access	1,138	19.4
Child Support/Custody/Access/Spousal Support	655	11.2
Child Support Only	622	10.6
Child Support/Arrears	185	3.2
Child Support/Custody	176	3.0
Custody/Access[2]	174	3.0
Child Support/Custody/Access/Award Termination Provision	166	2.8
Child Support/Custody/Access/Spousal Support/Award Termination Provision	144	2.5
Child Support/Custody/Access/Other Issue	98	1.7
Child Support/Custody/Access/Review Clause	88	1.5
Other Combination	1,106	18.9
Missing	1,312	22.4

1 Total N = 5,864.

2 Because the database includes all divorce cases involving children in the participating jurisdictions, a small number of cases do not deal with child support.

Access Terms

The instrument requested information on the terms of access arrangements for those cases in which access was mentioned.[11] Table 9.2 presents the types of access terms reported. The most frequent type of access was "reasonable/liberal" (54.1 percent), followed by "scheduled/specified" (21.5 percent). Other types of access arrangements were considerably less frequent, and the type of access terms was unknown in 14.2 percent of cases.

Table 9.2: Type of Access Terms[1]

Access Terms	n	%
Reasonable/Liberal	2,929	54.1
Scheduled/Specified	1,164	21.5
Supervised Visiting	115	2.1
No Information/No Visiting	60	1.1
Information/No Visiting	13	0.2
Other	150	2.8
Not Applicable[2]	214	4.0
Unknown	767	14.2

1 Total N = 5,864. Missing Cases = 452.

2 Includes cases such as shared custody.

11 See Appendix B, Coding Manual, p. 5 for definitions of access terms.

Spousal Awards

A total of 565 cases (9.6 percent of the total sample) had a valid (non-zero) spousal support award amount. Due to the nature of the survey, these only represent cases in which children were involved. Of these cases, the majority (84.8 percent) had awards that were payable monthly. In 68 cases, or 12 percent of the total, the award was a lump sum, and in 18 cases (3.2 percent) an annual spousal support amount was specified.

The monthly spousal award amount ranged from $1 through $7,000. Almost three-quarters of the monthly awards (74.7 percent) were $1000 or less. The lump sum awards ranged from $1 to $2,500,000. All of the 18 cases of *annual* spousal support had an amount of $1. The *Divorce Act* stipulates that spousal awards are to be considered after child support and, for this reason, are sometimes quite low. However, these amounts are often entered so that they can be reconsidered at a later time.

A total of 543 of the spousal support cases specified the paying spouse. In 538 cases (99.1 percent) the husband was the paying spouse, while in only 5 cases (0.9 percent) the wife was the payer.

Number of Children in Case

Data were available on the number of children included in all but 70 cases. The majority of cases included either one (n = 2,317; 40 percent) or two (n = 2,551; 44 percent) children. Three children were reported in 12.9 percent (n = 750) of cases. Because few cases involved four or more children (n = 176; 3 percent), they were collapsed into a single category for purposes of subsequent analyses.

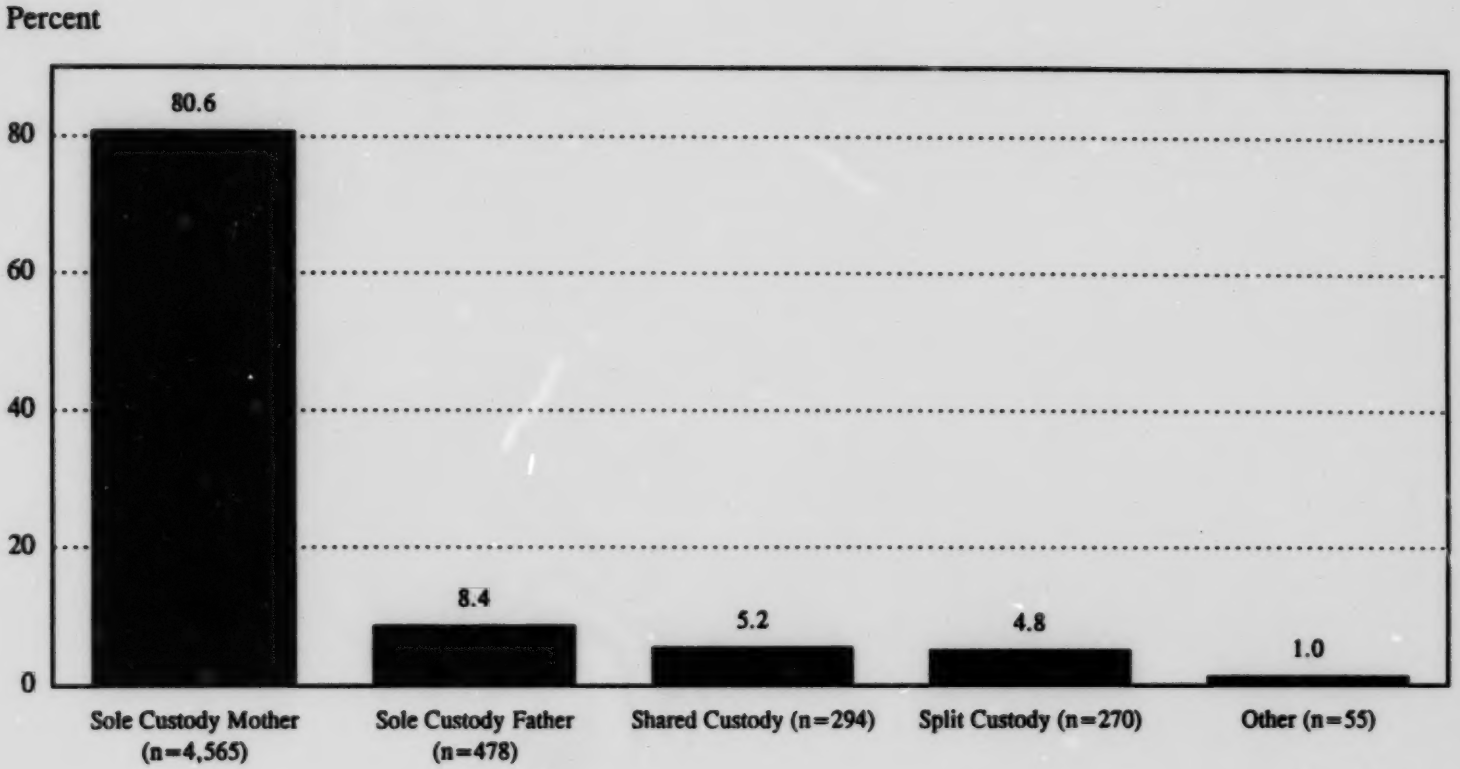
It is not possible to determine exactly how many children over the age of majority are present in the database since only year of birth is requested on the instrument for each child involved in the case. However, an estimate of this number was computed. This estimate is conservative in that there may be some children eighteen years of age who are not identified as being over the age of majority. This estimate indicated that there was at least one child over the age of majority in 518 cases (8.8 percent of the total), which represents a total of 752 children.

The revised survey instrument for Phase 2 also asked for the number of children treated as under the age of majority and the number of children treated as over the age of majority where this information was available. It was indicated in 255 cases that there was at least one child treated as over the age of majority.

Type of Custody Arrangements

Figure 9.3 presents the type of custody arrangement in the cases according to the definitions of custody provided in the Guidelines, which refers mainly to principal residence of the children. In the majority of cases (80.6 percent), the mother had sole custody, while the father had sole custody in 8.4 percent of cases. Shared custody, where a child spends at least 40 percent of the time with each parent, and split custody, where one or more children have primary residence with the mother and one or more children have primary residence with the father, were relatively infrequent at 5.2 percent and 4.8 percent, respectively.

Figure 9.3: Type of Custody Arrangements



Total N = 5,864. Missing Cases = 202.

Child Support Award Amounts

Data were available on monthly child support award amounts for a total of 4,620 cases, representing 78.8 percent of the total.[12] Across all cases, monthly child support amounts ranged from $1 through $8,366.

It was indicated in 18 cases that an annual amount was awarded for child support. The range of annual awards was $1 to $7,081. Lump sum child support awards were reported in 81 cases and ranged from $190 to $247,500.

In the cases in which the paying parent was specified, the father was the payer in 94.3 percent of the cases (n = 4,387) while the mother was the payer in 5.6 percent of cases (n = 262). Information on the paying parent was not available in 29 cases with valid child support award amounts.

Paying and Receiving Parent Incomes

A non-zero income for the paying parent was specified in 4,426 cases (75.5 percent of the total sample) and was coded as "not stated" in 1,217 cases.[13] As would be expected since the receiving parent's income is not required in straightforward applications of the Guidelines, a non-zero receiving parent's income was specified in fewer cases (2,532; 43.2 percent of the total).

The median annual income for paying parents was $35,353 (mean = $41,418) and ranged from $144 through $1,100,000. The median income for receiving parents was $24,000 (mean = $28,162), and ranged from $444 through $304,660.

For purposes of additional analysis of income information, the incomes of paying and receiving parents were collapsed into seven categories:

$1 – $14,999
$15,000 – $29,999
$30,000 – $44,999
$45,000 – $59,999
$60,000 – $74,999
$75,000 – $149,999
$150,000 and greater.

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[12] Because it was not possible to determine whether cases that had $0 coded for monthly child support award amount represented actual awards of $0, these cases were excluded from this analysis (n = 238). In addition, cases that reported monthly child support award amounts in excess of $6,000 were examined individually to determine if these awards were likely accurate given the other information available on the case. On this basis, monthly award amounts in excess of $10,000 for six cases were excluded from these analyses.

[13] It was not possible to determine with certainty whether cases having $0 entered for income actually reflected no income. For this reason, these cases have been excluded from the relevant analyses (n = 221 for paying parent income and n = 399 for receiving parent income).

Figure 9.4 presents the categorized income levels for the paying and receiving parents. The most frequent income category for paying parents was $30,000 to 44,999, with 30 percent of valid responses falling into this category. A total of 12.1 percent of paying parents fell into the lowest income category, and 1.5 percent had incomes in excess of $150,000.

The pattern for receiving parents is somewhat different than paying parents in that the most common income category for receiving parents is $15,000 to $29,999 (35.5 percent of non-missing responses), followed by 26.8 percent in the $1 to $14,999 range. The proportion of cases in the higher income ranges was considerably lower for receiving parents than for paying parents.

A new item on the instrument requested information on the source of income data if other than an order or judgment. This item was completed in 1,118 cases and the most frequent responses were affidavit (n = 591; 52.9 percent), child support fact sheet (n = 147; 13.1 percent), agreement (n = 93; 8.3 percent), and financial statement (n = 78; 7 percent).[14]

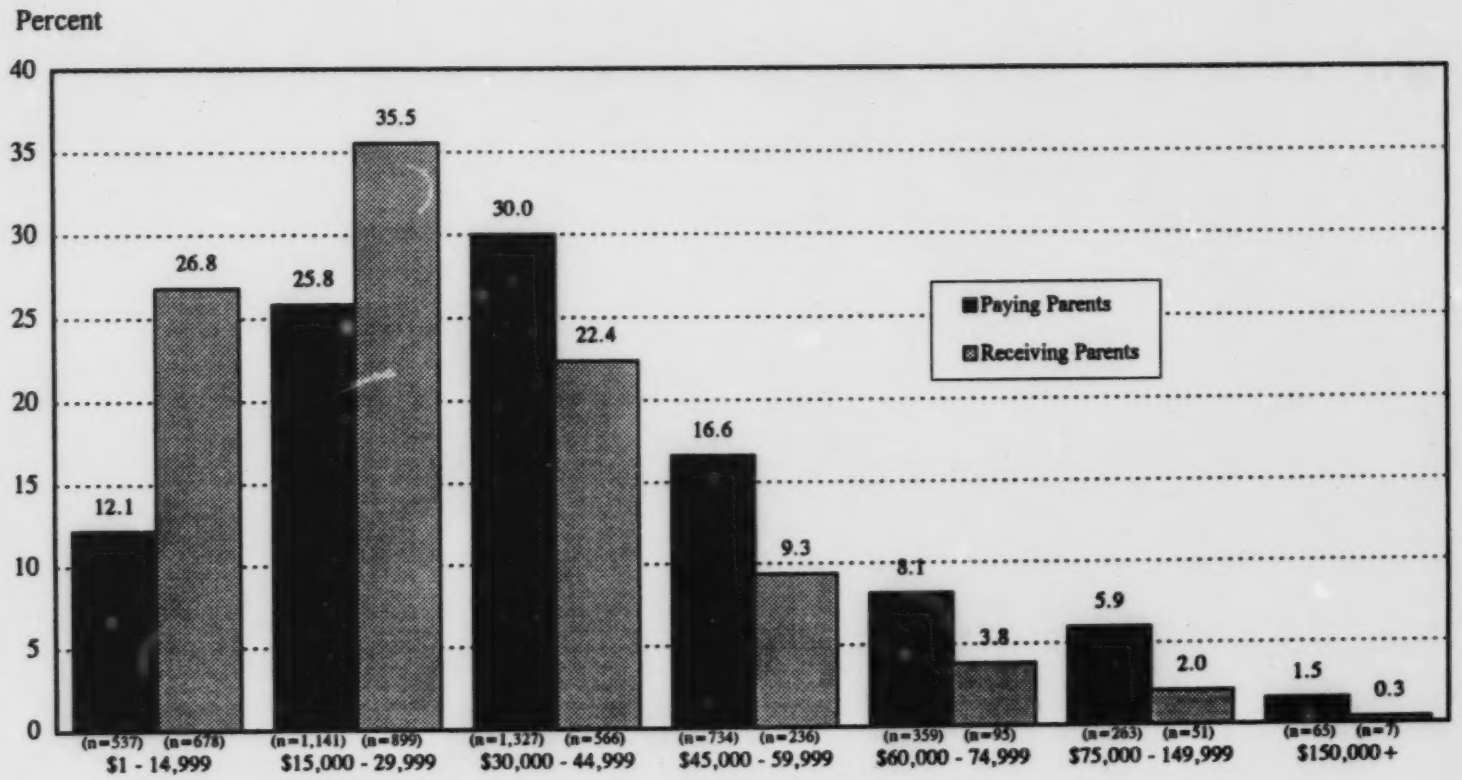
Figure 9.5 presents the proportion of paying and receiving parents with legal representation by categorized annual incomes. The proportion of paying parents with legal representation tended to increase as income levels increased. Across all income levels, receiving parents were more likely to have legal representation than paying parents; however, the proportion of receiving parents with legal representation tended to decrease as income levels increased. The Guidelines only require the income of receiving parents to be provided in cases where there are special or extraordinary expenses, undue hardship, or shared or split custody. Thus, the most straightforward cases that would be least likely to involve legal representation for the receiving parents are not included in this figure.

Parents' incomes were also analyzed with respect to the disposition of the case (i.e., whether it proceeded by consent, was uncontested, or was contested). The median income of paying parents in cases which were resolved by consent or were uncontested (n = 3,649) was $35,430 (mean = $41,806); in contested cases (n = 733) the comparable figures were quite similar (median = $35,200; mean = $39,976). The median income for receiving parents in consent cases or uncontested cases (n = 2,134) was $24,514 (mean = $28,649); in contested cases (n = 383), the median receiving parent income was $22,000 (mean = $25,368).

Figure 9.6 presents the proportion of cases that were contested by paying and receiving parents' annual incomes. The pattern for paying parents was not consistent across income levels; however, for receiving parents there was a tendency for the proportion of contested cases to decrease as income increased.

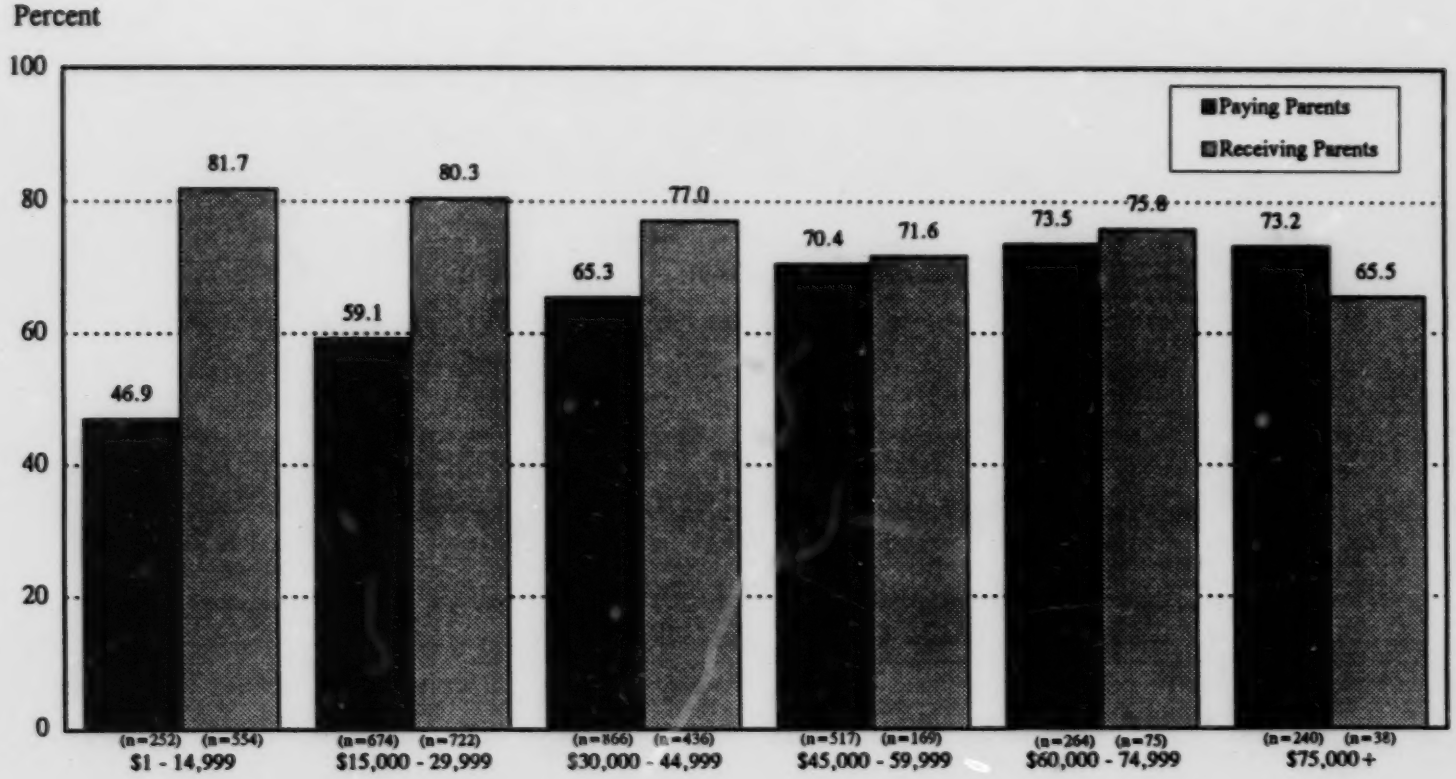
[14] Although it is acknowledged that income information taken from sources other than an actual order may not be as reliable given the importance of income information in the present study, the data collected from other sources were used.

Figure 9.4: Paying and Receiving Parents' Annual Incomes



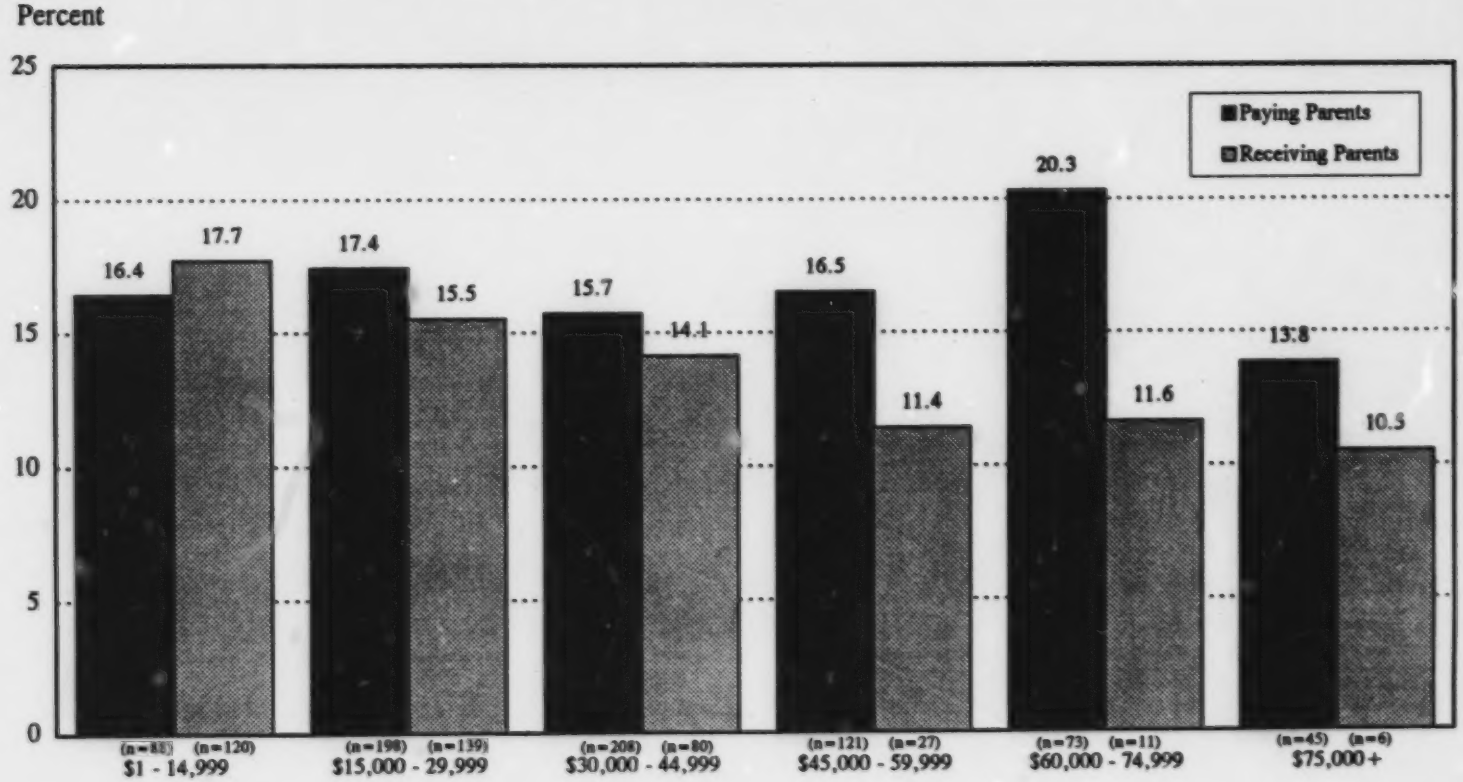
Total N = 5,864. Missing Cases on Paying Parent Income = 1,438. Missing Cases on Receiving Parent Income = 3,332.

Figure 9.5: Percentage of Paying and Receiving Parents with Legal Representation by Annual Income



Total N = 5,864. Missing Cases on Paying Parent Income = 1,438. Missing Cases on Receiving Parent Income = 3,332.

Figure 9.6: Percentage of Contested Cases by Paying and Receiving Parents' Annual Incomes



Total N = 5,864. Missing Cases on Paying Parent Income = 1,438. Missing Cases on Receiving Parent Income = 3,332.

Determination of Award Amount

Figure 9.7 indicates the method used to determine the amount of the child support award according to the information available to the data capture clerks. In 3,033 cases (54.9 percent of valid responses to this item) the file indicated that child support guidelines were followed.[15] The second most frequently reported method was that a prior order or agreement dealt with child support (525 cases; 9.5 percent). In almost one-quarter of the cases (23.2 percent), the method used for determining the support amount was coded as "Unknown/Not stated," and in 6.2 percent of cases there was no indication of how the support amount was calculated. It is very likely that some portion of the cases marked as not stated, as relying on a previous order or agreement, or as having no indication of how support was calculated did in fact use guidelines. Therefore, analyses using this variable should be interpreted with caution.

Discretionary Awards for Children at or over the Age of Majority

This item was rarely completed on the survey instrument, which suggests that either discretionary awards for children at or over the age of majority are rarely used or that information regarding these awards was not readily available to the data capture clerks. Further, since the question asked for the discretionary amount for children over the age of majority only if they were not included in the table amount for all children, it is likely that child support awards for some children over the age of majority are included in the total child support amount, or reflected in special expenses for post-secondary education.

Award of Special or Extraordinary Expenses

The survey requests information on whether special or extraordinary expenses were awarded in each case and, for those cases in which they were awarded, whether an amount or a proportion of the paying parent's share of these expenses was specified. The instrument also asks which specific expenses were awarded according to those contained in section 7 of the Federal Child Support Guidelines.

A total of 1,832 cases (31.2 percent of the total sample) indicated that special or extraordinary expenses were awarded; 1,467 of these cases (25 percent of the total, or 80 percent of the cases in which special or extraordinary expenses were awarded) indicated that an amount or a proportion of these expenses to be paid by the paying parent was specified and 365 cases (6.2 percent) did not specify an amount or proportion.[16] Special or extraordinary expenses were not awarded in 3,716 cases (63.4 percent of the total), and information about whether special or extraordinary expenses were awarded was missing in 316 (5.4 percent) of cases.

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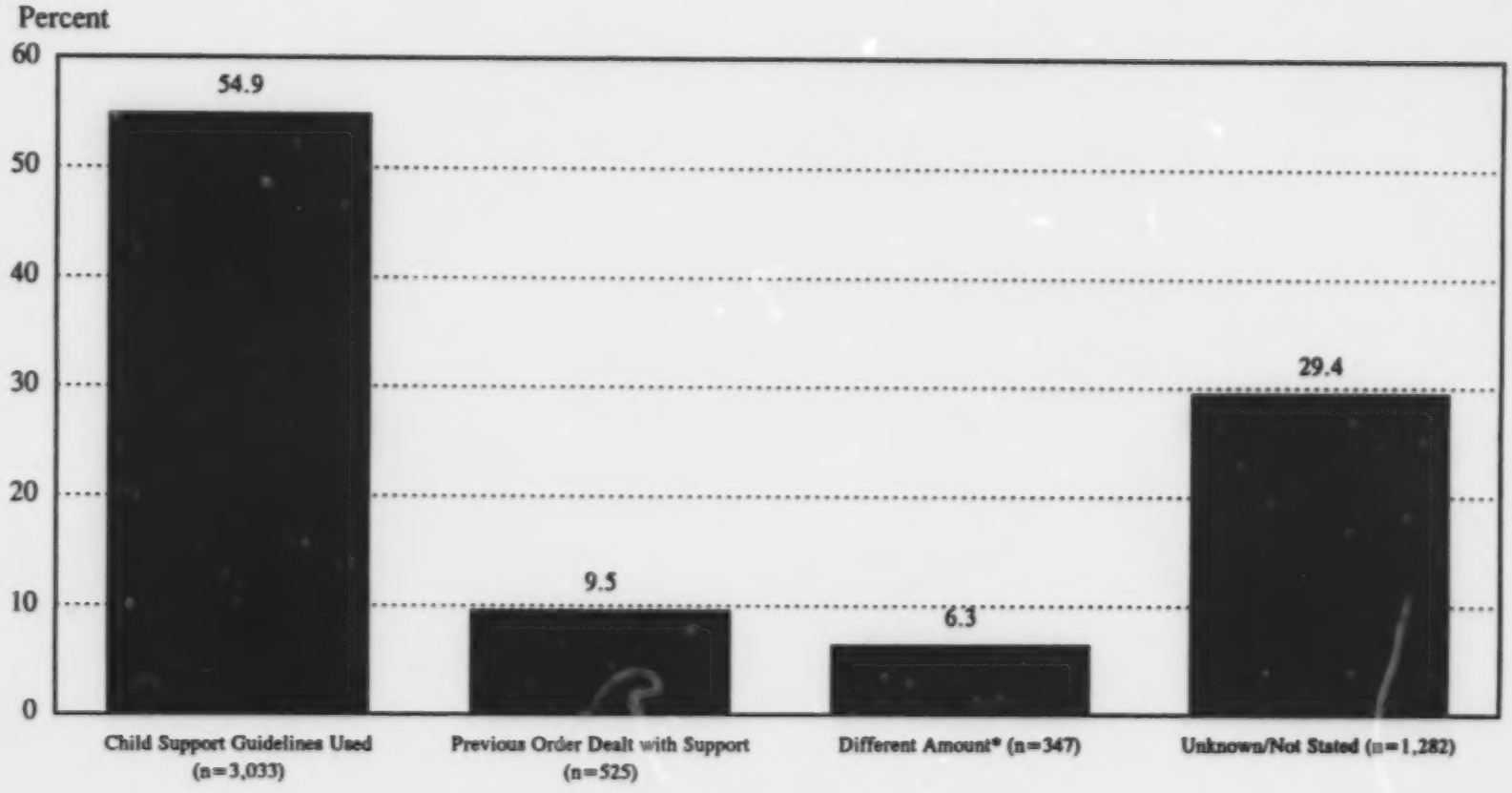
[15] Child support guidelines have been designated in a few provinces, which are used in these jurisdictions if both parents reside in that province. If the parents reside in different provinces/territories, the federal Guidelines are used. With the exception of Prince Edward Island where some of the awards in the lower income levels are slightly higher, the table amounts of designated provinces are the same as the federal table amounts.

[16] If an amount for special or extraordinary expenses is not specified in an order, then the expenses are not enforceable by the provincial or territorial maintenance enforcement agencies.

Figure 9.7: How Award Amount was Determined



Total N = 5,864. Missing Cases = 335.

* "Different Amount" determined as per Section 15.1(5), 15.1(7), 17(6.4), 17(6.5) of the *Divorce Act*.

Of the 860 cases that specified the monthly amount of the paying parent's share of special or extraordinary expenses, the amounts ranged from $2 to $1,500.[17] Of the 911 cases in which the paying parent's proportion of special expenses was specified, the proportion varied from 17 percent to 100 percent. The most common proportion specified was 50 percent in 281 cases—followed by 100 percent in 127 cases.[18]

Section 7 of the Guidelines allows the court to award special or extraordinary expenses in one or more of six categories. Figure 9.8 presents the number and proportion of cases out of the total sample in which each specific type of expense was awarded. The most commonly awarded type of expense was child care expenses (11.6 percent of total cases). This was followed by medical/dental insurance premiums at 11.1 percent, and health-related expenses at 10.3 percent. The least frequently awarded expenses were primary/secondary education (4.7 percent) and post-secondary education (6.9 percent).

Of the 1,660 cases that specified which individual special or extraordinary expenses were awarded, the majority of cases (51.5 percent) had one expense awarded. Considerably fewer cases had two (23.6 percent), three (13.2 percent), four (6.1 percent), five (3.6 percent), or six (2 percent) special or extraordinary expenses awarded. Table 9.3 presents the most common combinations of special or extraordinary expenses awarded.

A total of 464 cases had "other" arrangements, outside of Section 7 special or extraordinary expenses, as write-ins. A substantial number of these cases (n = 197; 42.5 percent) had expenses related to payments for life insurance policies which specified the children as beneficiaries. Other write-in responses included children's education (n = 28) and access costs (n = 11).

Undue Hardship

Undue hardship applications were identified in only 56 (1 percent) of the total cases in the sample.[19] Of these applications, 49 were brought by the paying parent and 7 were brought by the receiving parent. There were no cases of cross-application. In 10 cases, it was stated that the incomes of other household members were used in the standard of living test, incomes of other household members were not used in 25 cases, and their use was unknown in 21 cases.

Of the 49 applications brought by the paying parent, 35 resulted in a decrease of the Guidelines amount, 8 were denied, none resulted in an order amount higher than the Guidelines amount, and the outcome of 6 applications was unknown or missing. Of the 7 applications by the receiving parent, 1 resulted in an increase of the Guidelines amount, 3 were denied, and 1 resulted in an order that was less than the Guidelines amount. The outcome was unknown in 2 cases.

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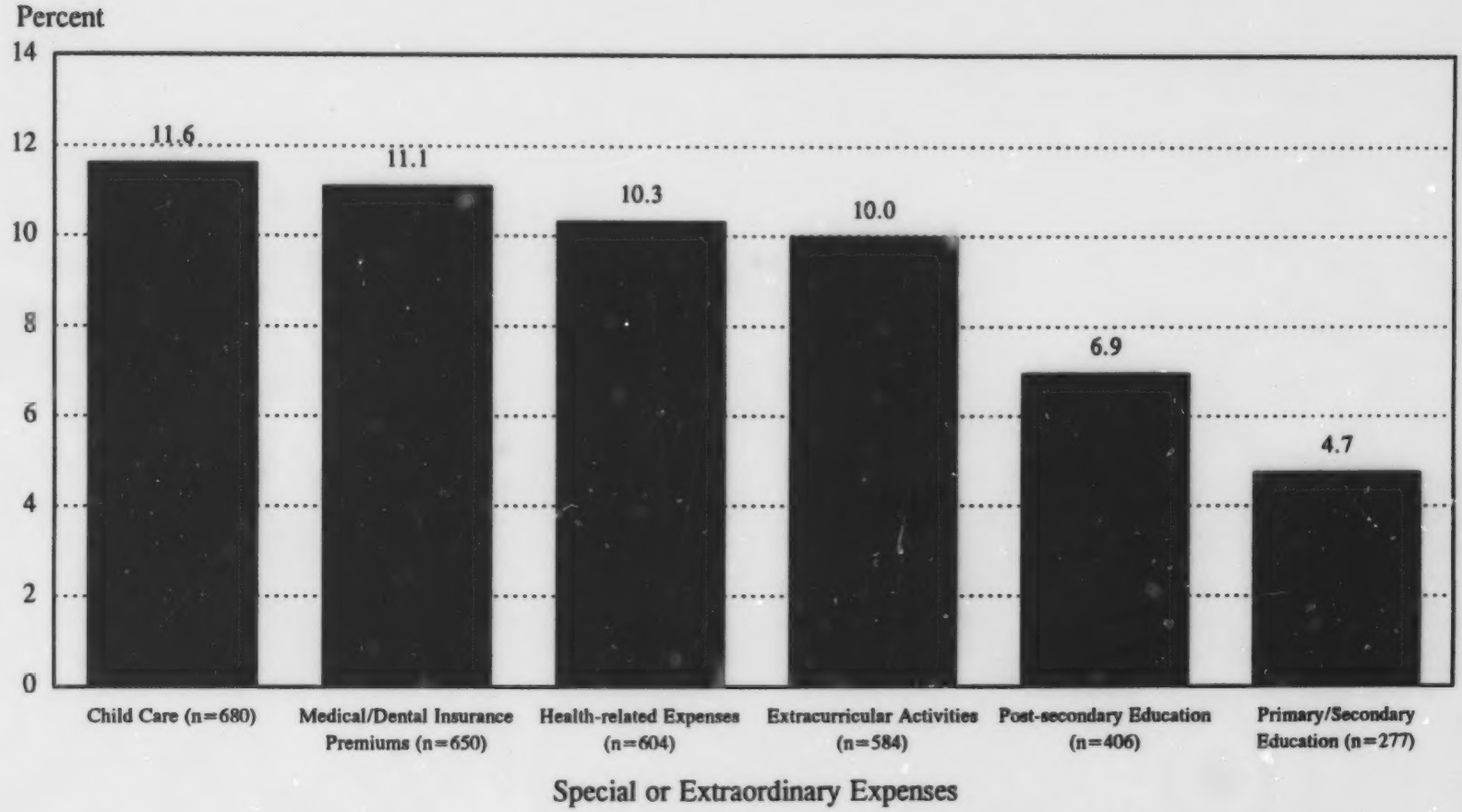
[17] Cases that reported monthly special or extraordinary expenses amounts in excess of $1,000 were examined individually to determine if these amounts were likely accurate according to other information in the case. On this basis, two cases with monthly amounts greater than $10,000 were excluded from analysis of this variable. In addition, seven cases with a monthly amount of $0 were also excluded.

[18] Annual and lump sum special or extraordinary expenses were awarded in very few cases (17 and 23 cases, respectively) and thus were not analyzed further.

[19] The data probably do not reflect the number of cases in which undue hardship is raised. If a claim for undue hardship is raised and subsequently fails, there may be no record of the application on the case file.

Figure 9.8: Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines



Total N = 5,864.

These categories are not mutually exclusive and more than one expense can be specified in a case.

Reasons for the outcome of the undue hardship application were not given in any case where the payment amount was increased. In cases where the payment amount was decreased the most common reasons given were "another family" (n = 8) and "expenses for access" (n = 6).

Table 9.3: Number of Cases Awarding Most Frequent Combinations of Special or Extraordinary Expenses[1]

Combination of Expenses	n	%[2]
Child Care only	370	22.3
Medical – Dental Insurance premiums only	134	8.1
Extracurricular Activities only	127	7.7
Post-secondary Education only	103	6.2
Health-related Expenses only	90	5.4
Medical – Dental Insurance Premiums/Health-related Expenses	83	5.0
Medical – Dental Insurance Premiums/Health-related Expenses/ Post-secondary Education	63	3.8
Child Care/Extracurricular Expenses	58	3.5
Child Care/Medical – Dental Insurance Premiums	51	3.1
Medical – Dental Insurance Premiums/Health-related Expenses/ Post-secondary Education/Extracurricular Activities	39	2.3
Medical – Dental Insurance Premiums/Health-related Expenses/ Primary – Secondary School Expenses/Post-secondary Education/ Extracurricular Activities	35	2.1
Child Care/Medical – Dental Insurance Premiums/ Health-related Expenses/Primary – Secondary School Expenses/ Post-secondary Education/Extracurricular Activities	34	2.0
Primary – Secondary School Expenses only	31	1.9
Health-related Expenses/Extracurricular Activities	30	1.8
Primary – Secondary School Expenses/Extracurricular Activities	27	1.6
Medical – Dental Insurance Premiums/Extracurricular Activities	27	1.6
Other Combinations	358	21.6

[1] Total N = 5,864

[2] Percentages are based on the total number of cases in which the individual special or extraordinary expenses awarded were given (n = 1,660).

Variations

As noted above, the database included 1,077 cases coded by data capture clerks as involving variations to child support orders. In 48.6 percent (n = 513) of cases where data were available, the applicant was the receiving parent. The paying parent was the applicant in 45.3 percent (n = 478) of cases, and in 6.2 percent (n = 65) of cases, parents were cross-applicants.

Of 1,030 variation applications with valid data, 444 (43.1 percent) resulted in a decrease of the face-value amount, while 31.6 percent resulted in an increase of the face-value amount. The application was denied in 2 percent of cases and resulted in a termination order in 6.2 percent of cases. The outcome of the application was not stated in 17.1 percent of cases. While over 40 percent of variation applications resulted in a decrease, changes in the tax treatment mean that a decrease in the face-value amount does not necessarily mean a decrease in child support to the receiving parent, depending on the receiving parent's income. Before the tax changes, receiving

parents paid tax on child support awards, meaning that the net amount was less than the award amount if the recipient's total income was high enough to be taxable. Since child support awards are no longer taxable, a decrease in the award could result in an actual increase in the net amount for the receiving parent. However, since paying parents can no longer claim child support as a tax deduction, an increase in the face-value amount always means that the paying parent pays more child support and that the receiving parent receives more support.

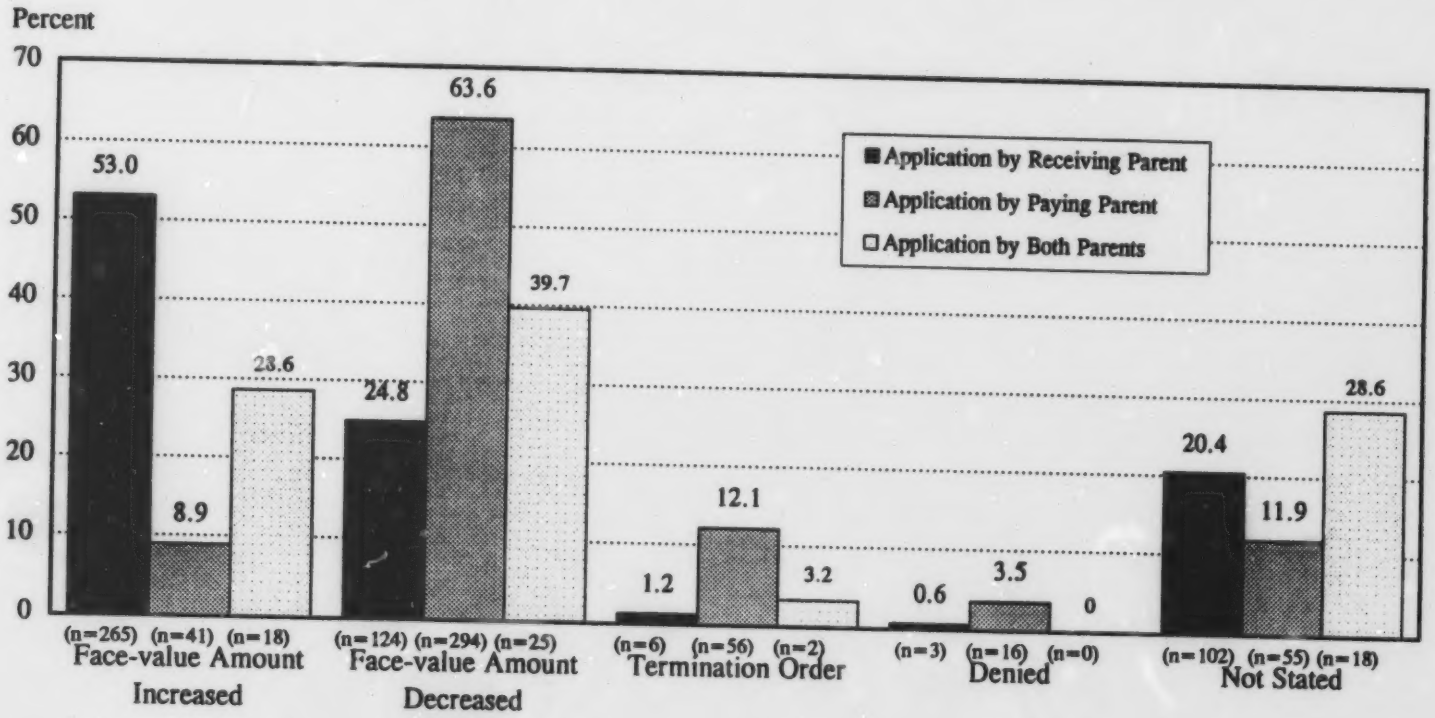
Out of a total of 1,029 cases in which a reason for the variation application was coded, the most common reason was the implementation of the Guidelines (27.9 percent). This was followed by change of custody (10.8 percent), change in income (8.6 percent), and child independent (7.9 percent). The reason for variation application was coded as "Unknown/Not stated" in 26.3 percent of cases. The amount of the original order was available for 852 cases, with a median of $450 (mean = $607). For cases in which the face-value amount was increased, the most frequent reason given for the application was implementation of the Guidelines (48.3 percent) compared to 24.3 percent of cases resulting in a decrease of the face-value amount. Other change in circumstances was more frequently cited as the reason for the variation application in cases where the face-value amount was decreased (57.9 percent) than in cases where the amount was increased (27.9 percent).

Figure 9.9 presents the outcome of variation applications by applicant. Of applications brought by the receiving parent, 53 percent resulted in an increase of the face-value amount, 24.8 percent resulted in a decrease, 1.2 percent resulted in a termination order, and 0.6 percent were denied. Of applications brought by the paying parent, 8.9 percent resulted in an increase of the face-value amount, 63.6 percent resulted in a decrease of the face-value amount, 12.1 percent resulted in a termination order, and 3.5 percent were denied. Of the cross-applications, the majority resulted in a decrease of the face-value amount (39.7 percent). Fewer cases of cross-applications resulted in an increase (28.6 percent), termination order (3.2 percent), or denial of the application (no cases).

Adherence to Section 13 of the Child Support Guidelines

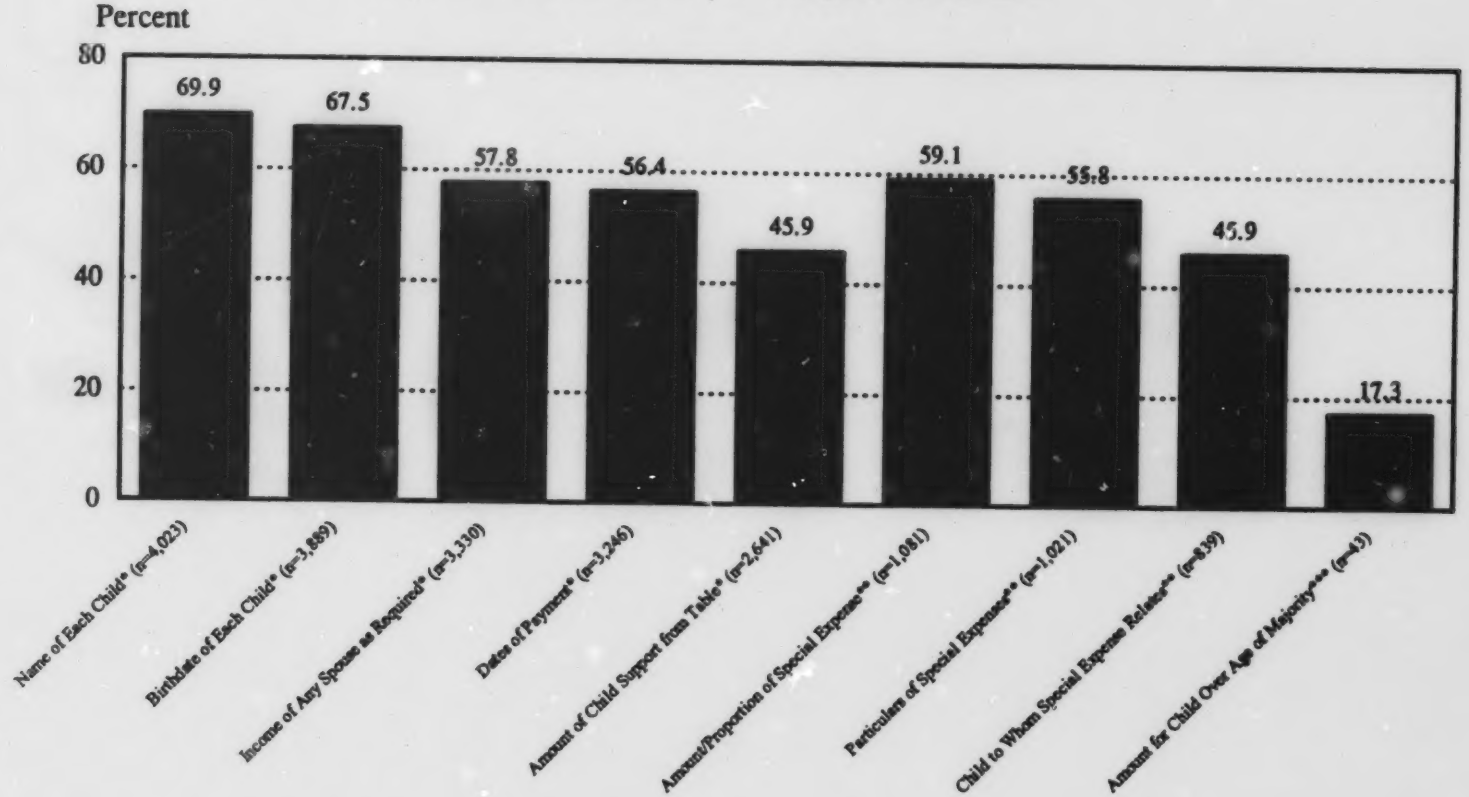
Section 13 of the Federal Child Support Guidelines specifies several pieces of information that should be included in a child support order. In the revised survey instrument used in Phase 2, data capture clerks were explicitly asked to indicate, by means of a checklist, the individual components contained in section 13 that were included in each order. Since this only applies to cases in which there was a child support order, only cases where it was indicated that child support was dealt with were included as the base sample (n = 5,759). Figure 9.10 indicates the proportion of cases reporting the inclusion of each piece of information specified in section 13.

Figure 9.9: Decision of Variation Application, by Applicant



Total Number of Variation Orders = 1,077. Cases missing decision of variation application and/or applicant = 52.

Figure 9.10: Percentage of Cases Containing Information Required by Section 13 of the Child Support Guidelines



* These percentages are calculated based on the number of cases including a child support order (n=5,759).

** These percentages are based on the number of cases including a child support order and in which it was indicated that special or extraordinary expenses were awarded (n=1,829).

*** This percentage is based on the number of cases including a child support order and in which it was indicated that one or more children were treated as over the age of majority (n=249).

Over two-thirds of cases had information on both the name and birthdate of each child to whom the order relates (69.9 percent and 67.5 percent, respectively). Over one-half of the cases had information on the income of any spouse whose income was used to determine the child support amount (57.8 percent) and the dates on which payments are due (56.4 percent). A total of 45.9 percent of cases had the amount of child support as determined from the appropriate table.

With respect to the information required when special or extraordinary expenses are awarded, only cases with child support awards and special or extraordinary expenses were included (n = 1,829). Of these cases, 59.1 percent were coded as having the amount or proportion of any extraordinary expense awarded, 55.8 percent were reported as having the particulars of all special or extraordinary expenses awarded, and 45.9 percent reported the identity of the child to whom any special or extraordinary expense related.

Section 13 also requires that the amount considered appropriate for any child over the age of majority be listed in a child support order. Determining compliance with this component of section 13 is problematic. Although there were 249 cases in the database in which there was a child support order and it was indicated that there were children treated as over the age of majority, it is probable that some unknown proportion of these children were not considered when determining the child support award amount and thus would not have an amount reported under section 13. However, this is the best base figure available for determining adherence to this component of section 13. Using this figure, a total of 17.3 percent of the cases were coded as having the amount for a child over the age of majority. For the reason noted above, this figure should be treated with caution.

9.2 Factors Related to Child Support Awards

To more fully explore child support award amounts and their relationship to other factors, a series of secondary analyses were undertaken. Given the relatively small number of cases falling into certain categories in the current version of the database (e.g., incomes over $150,000, cases without legal representation for either parent, contested cases), some of these analyses are based upon quite small sample sizes and thus should be interpreted with caution at this point. It is anticipated that, as the number of cases in the database increases over the course of data collection, these analyses will become more reliable.[20]

Relationship between Child Support Awards and Table Amounts Recorded in Child Support Orders

One survey item asks for the Guideline table amount for the paying parent. Data capture clerks were instructed to include these amounts only if they were specified in the order or judgment or supporting documentation. A total of 2,993 sole custody cases had a response coded for both the child support award amount and the table amount for paying parent. It should be emphasized that the table amounts used for these analyses are those entered on the instrument by the data

[20] Given that sole custody cases represent those in which the most straightforward application of the Federal Child Support Guidelines would be expected, as well as the relatively small number of cases at this point reporting other types of custody, only sole custody cases (n = 4,559) are analyzed in this section unless otherwise noted. As the number of cases in the database increases, it should be possible to conduct similar analyses with other types of custody in subsequent reports.

capture clerks based on information contained in the file and not the actual published table values.

Table 9.4 presents the proportion of cases reporting actual award amounts less than the table amount,[21] equal to the table amount, and greater than the table amount for all cases and also separately by income level of the paying parent. Across all cases, the actual child support award amount was most likely to be either equal to the table amount as coded on the instrument by the data capture clerks (59.4 percent) or greater than the table amount (34.2 percent). Only 6.4 percent of all cases reported an award amount that was lower than the table amount. For the most part, the analysis comparing award amounts with table amounts as coded on the instrument by paying parent income was consistent with the pattern observed with all cases. However, as paying parent income increased, there was a tendency for the percentage of cases in which the award amount was greater than the table amount to also increase. There was also a tendency, although not as pronounced, for the proportion of awards less than the table amount to increase as income increased.

Table 9.4: Total Child Support Award Amount in Relation to "Table Amount"[1] by Paying Parent Income in Sole Custody Cases

Income[2]	Relationship of Award to Table Amount[3]					
	Award Less than Table		Award Equal to Table		Award Greater than Table	
	n	%	n	%	n	%
$1 – $14,999 (n=354)	11	3.6	204	67.3	88	29.0
$15,000 – $29,999 (n=776)	41	5.1	496	61.2	273	33.7
$30,000 – $44,999 (n=845)	64	7.1	531	58.6	311	34.3
$45,000 – $59,999 (n=449)	28	5.9	283	59.3	166	34.8
$60,000 – $74,999 (n=218)	22	9.2	123	51.7	93	39.1
$75,000 – $149,999 (n=143)	12	7.4	80	49.4	70	43.2
$150,000 + (n=32)	5	13.9	15	41.7	16	44.4
All Cases (N=2,877)	191	6.4	1,778	59.4	1,024	34.2

1 This is the stated table value recorded in the order. These amounts have not been validated against the published table amounts.

2 Number of cases where income was missing = 1,171.

3 Number of cases where award amount and/or recorded table amount was missing = 2,050.

[21] To allow for minor variations from the table amounts as coded on the instrument, the child support award amount was considered to be equal to the table amount if it was within $5 (either higher or lower) of the table amount. Thus, an award was considered less than the table amount as stated on the instrument if it was more than $5 less; similarly, amounts greater than $5 above the award amount as stated on the instrument were considered higher than the table.

Paying Parent's Income and Child Support Award Amount

To investigate the relationship between the paying parents' incomes and monthly child support award amounts, a series of bivariate regression analyses were conducted.[22] Figure 9.11 plots the resulting regression lines for sole custody cases including one, two, or three children. Data were not analyzed separately for cases including more than three children due to the low numbers of these cases. The pattern of findings was quite consistent across number of children and indicated a steady increase in the amount of child support awards as the income of the paying parent increased and as the number of children increased. This pattern would be expected given that the table values increase incrementally with payer income and number of children in the case. This pattern was statistically significant for one child (F (1,1438) = 1054.7, $p < .001$), two children (F (1,1534) = 1343.8, $p < .001$), and three children (F (1,426) = 835.3, $p < .001$).

Child Support Award Amounts and Legal Representation

The relationship between paying parents' incomes and monthly child support award amounts was investigated by whether one or both parties had legal representation. Figure 9.12 presents the regression results for these analyses. The four regression lines representing "Mother Represented Only," "Father Represented Only," "Both Represented," and "Neither Represented" were essentially overlapping, indicating no significant differences in the relationship between paying parents' incomes and child support award amounts by whether one or both parties was represented.

Paying Parent's Income and Special or Extraordinary Expenses

A series of analyses was conducted to examine the relationship between the paying parents' incomes and the awarding of special or extraordinary expenses in sole custody cases. Figure 9.13 presents the number and percentage of cases within each income level that had special or extraordinary expenses awarded. There was a strong tendency for the proportion of cases with special or extraordinary expenses awarded to increase as income level increased. At the lowest income level, only 16 percent of cases had special expenses awarded. This proportion increased to 46.4 percent in the middle income range ($45,000–59,999) and to 49.1 percent at the highest income level.

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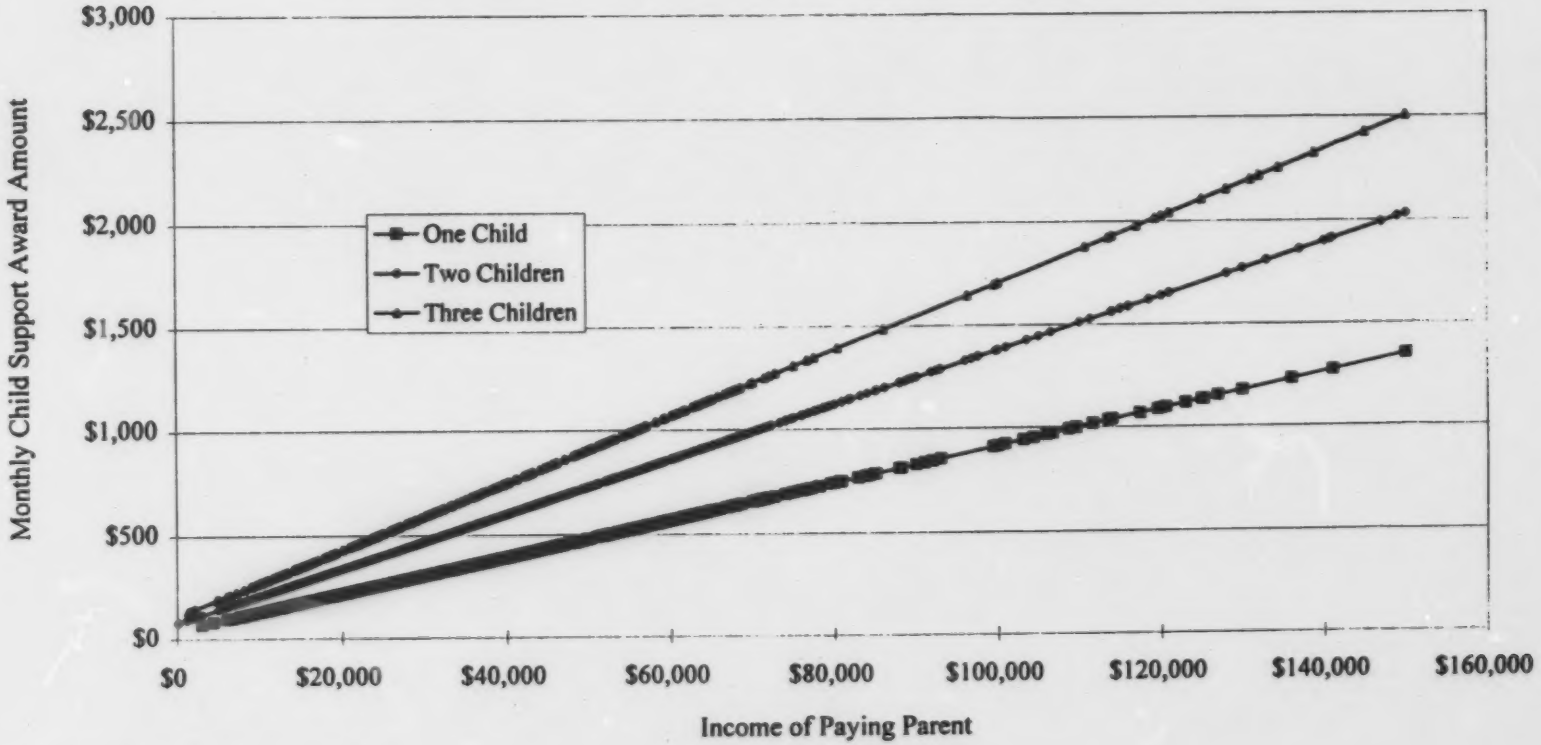
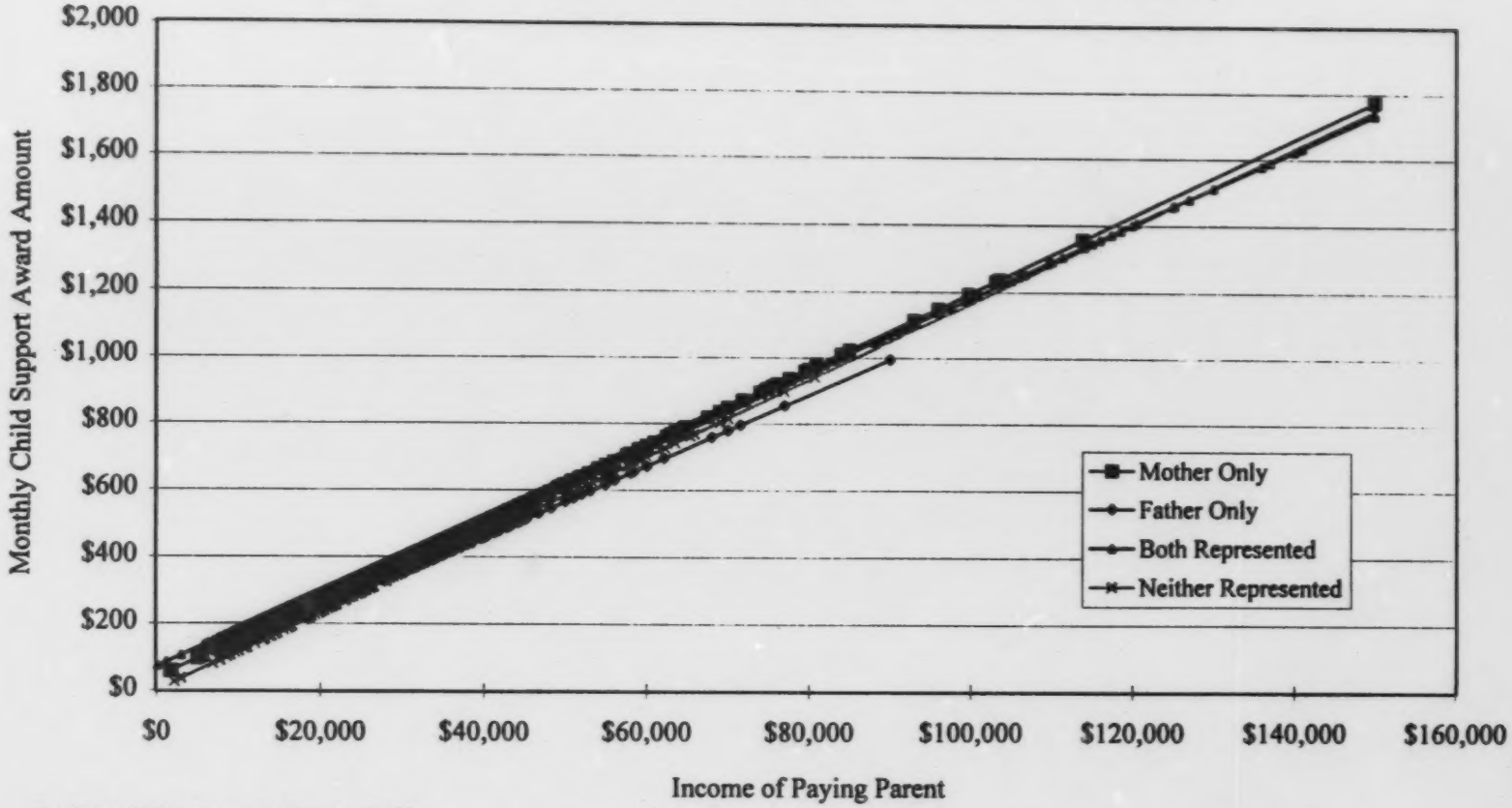
[22] For all regression analyses, 120 cases from Prince Edward Island that were dealt with under provincial legislation were excluded. In addition, 44 sole custody cases with paying parent incomes over $150,000 were excluded from regression analyses.

Figure 9.11: Regression Analysis of Monthly Child Support Awards by Paying Parent Income in Sole Custody Cases by Number of Children



Total N = 5,864. Cases analyzed = 3,404.
Sole custody cases missing data on monthly child support award amount (n=890) and/or paying parent income (n=1,171) are excluded from this analysis. In addition, 120 cases from Prince Edward Island that were dealt with under provincial legislation and 44 sole custody cases with paying parent income greater than $150,000 were also excluded.
n for one child = 1,440. n for two children = 1,536. n for three children = 428.
One child: $r = .65$; $F(1,1438) = 1054.7$, $p < 0.001$. Two children: $r = .68$; $F(1,1534) = 1343.8$, $p < 0.001$. Three children: $r = .82$; $F(1,426) = 835.3$, $p < 0.001$.

Figure 9.12: Regression Analysis of Monthly Child Support Awards by Paying Parent Income in Sole Custody Cases by Legal Representation of Parents

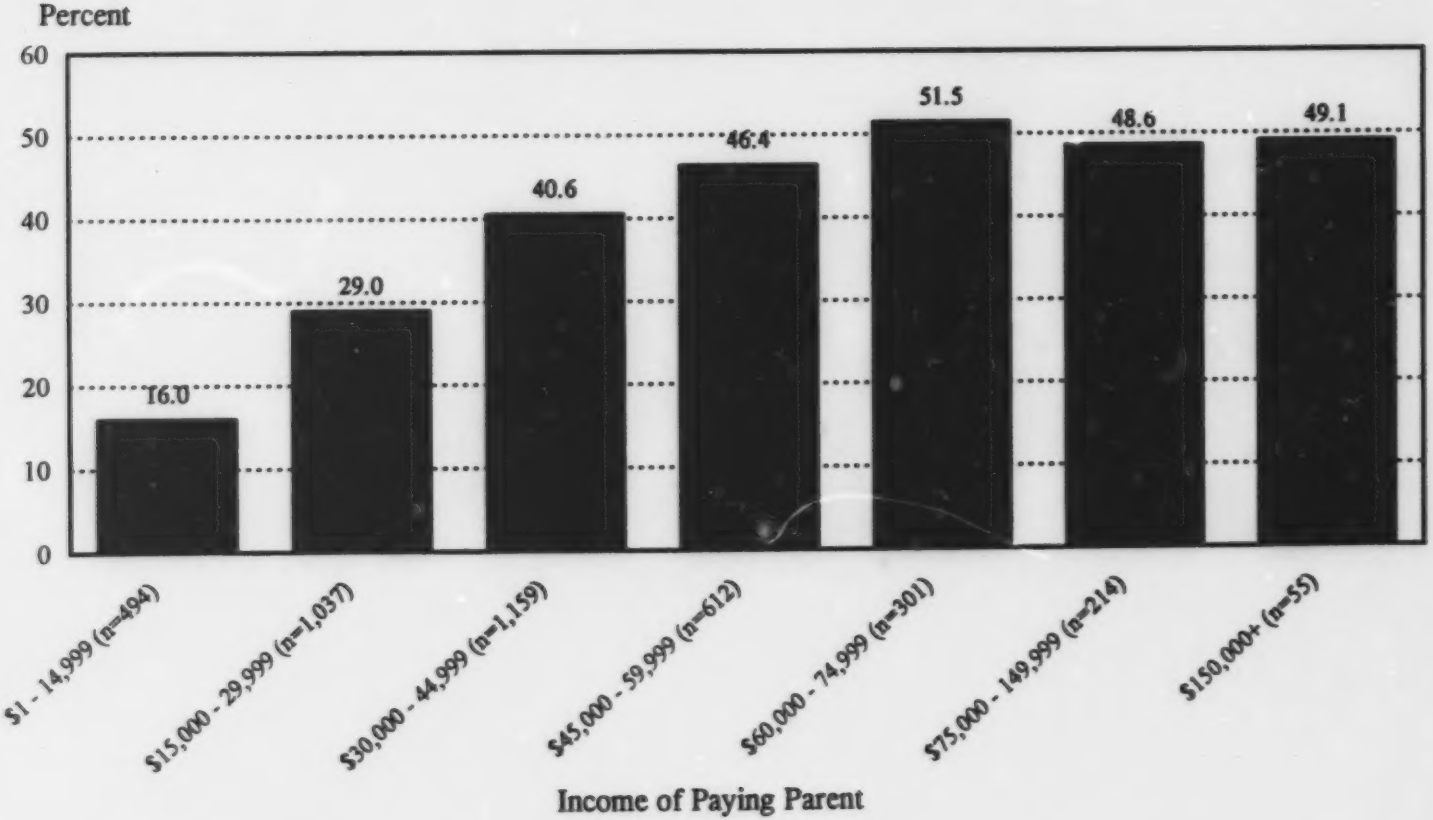


Total N = 5,864. Cases analyzed = 2,400.

Sole custody cases missing data on monthly child support award amount (n=890) and/or paying parent income (n=1,171) are excluded from this analysis. In addition, 120 cases from Prince Edward Island that were dealt with under provincial legislation and 44 sole custody cases with paying parent income greater than $150,000 were also excluded.

n for Mother Only Represented = 402. n for Father Only Represented = 120. n for Both Represented = 1,697. n for Neither Represented = 181.

Figure 9.13: Percentage of Cases Having Special or Extraordinary Expenses Awarded, by Income of Paying Parent in Sole Custody Cases



Total N = 5,864. Cases analyzed = 3,872.
Ns refer to the total number of cases within each income level.
Sole custody cases with missing data on paying parent income (n=1,171) are excluded from the analysis.

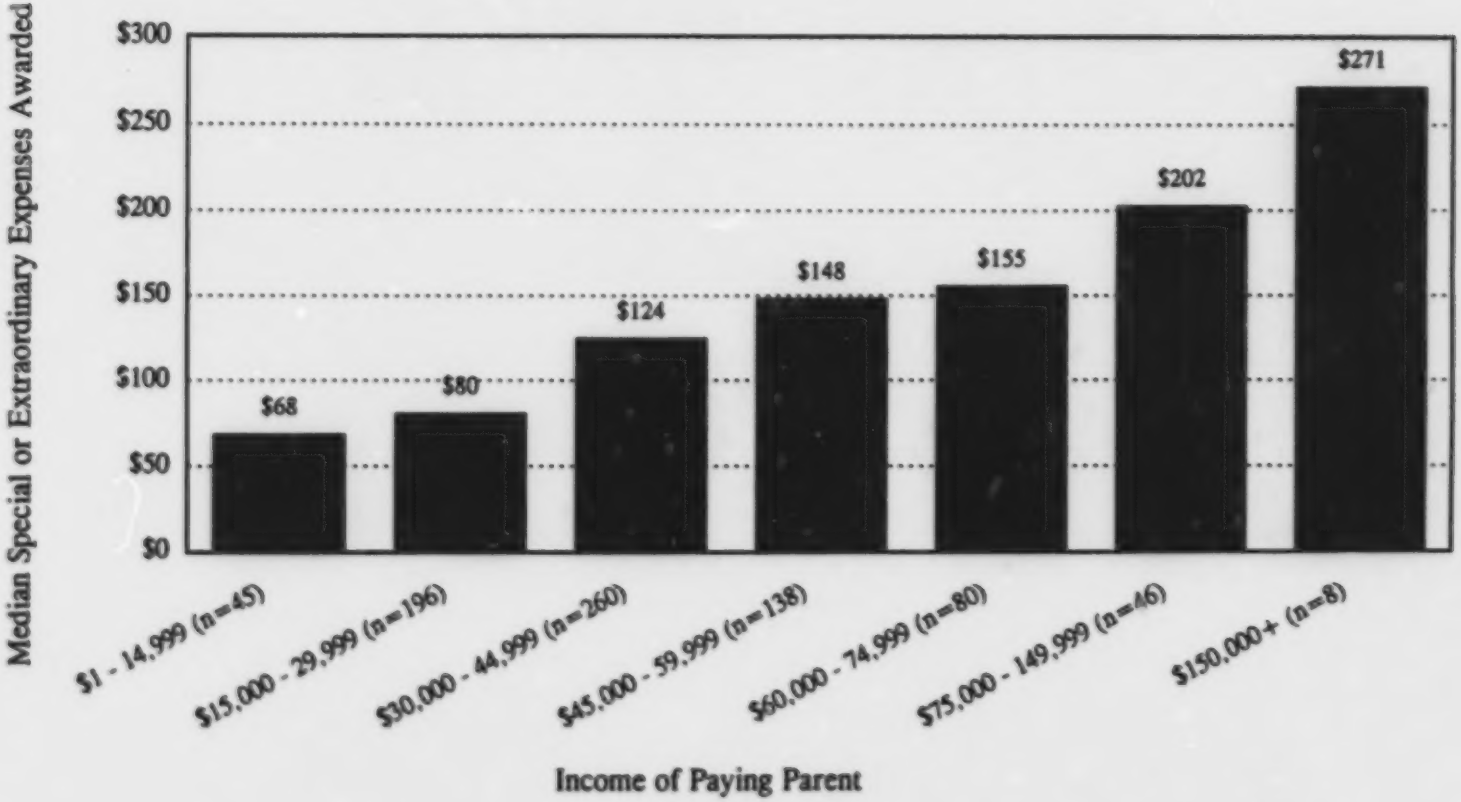
Figure 9.14 presents the median amount per month of special or extraordinary expenses (for those cases with a non-zero amount specified) within each income level. There was a consistent increase in the amount of special expenses awarded with increasing income levels. The median special expense awarded at the lowest income level was $68 (mean = $94); this amount increased to $148 (mean = $176) at the middle income level ($45,000 – 59,999) and to $271 (mean = $375) at the highest income level.

Child Support Award Amounts and Special or Extraordinary Expenses

To determine whether the inclusion of special or extraordinary expenses in an order affected the total amount of an order, the cases were divided into two groups: those that contained no special expenses and those that mentioned one or more expenses in the order. A regression analysis was conducted to examine the outcome of award amounts between these two groups, by payer income. Figure 9.15 presents the results of the analysis. When the paying parents' incomes were below $73,950, the total award amount was higher in cases where special or extraordinary expenses were awarded. However, when the paying parents' incomes reached $73,950 or more, there was no longer any statistically significant difference between the two groups in the total support award amounts recorded in the support order.

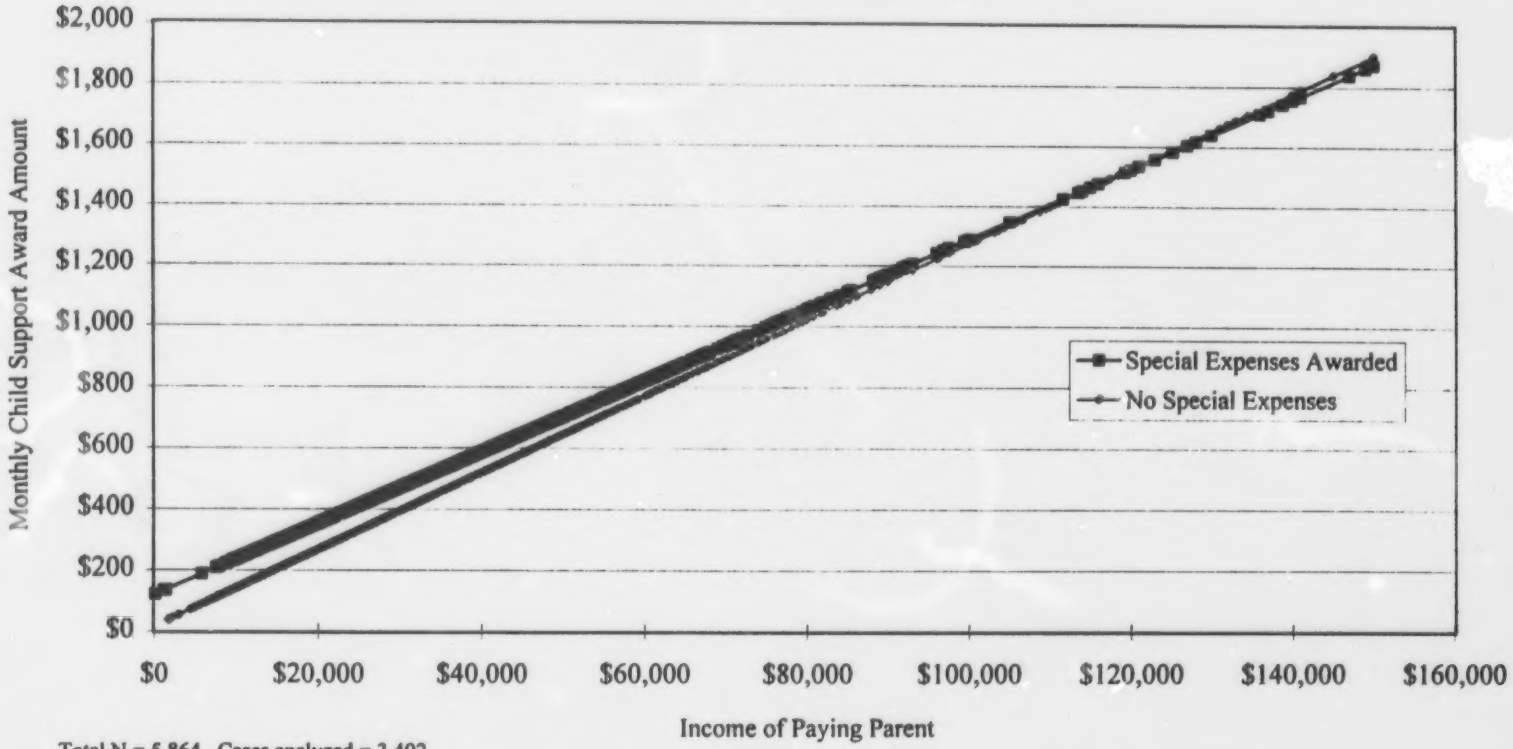
Further analysis is required to determine why this is happening. Such an examination will be conducted when sufficient data are available.

Figure 9.14: Median Special or Extraordinary Expenses Awarded per Month by Paying Parent Income for Sole Custody Cases Where Dollar Value Stated for Special Expenses



Total N = 5,864. Cases analyzed = 773.
Sole custody cases with missing data on paying parent income (n=1,171) and/or monthly amount of special or extraordinary expenses (n=4,245) are excluded from this analysis.

Figure 9.15: Regression Analysis of Monthly Child Support Awards by Paying Parent Income in Sole Custody Cases by Whether Special Expenses were Awarded



Total N = 5,864. Cases analyzed = 3,402.
Sole custody cases missing data on monthly child support award amount (n=890) and/or paying parent income (n=1,771) are excluded from this analysis. In addition, 120 cases from Prince Edward Island that were dealt with under provincial legislation and 44 sole custody cases with paying parent income greater than $150,000 were also excluded.
n for Special Expenses Awarded = 1,351. n for No Special Expenses = 2,051.
Below payer income of $73,950, there is a significant difference ($p < 0.05$) in award amounts depending on whether or not special expenses were included in orders.

APPENDIX A

SURVEY INSTRUMENT

Child Support Awards Under the Divorce Act Project

Form Completed: ☐☐☐☐☐☐ (yy) (mm) (dd) **Data Capture Person (Surname, Initial):** _____

What source documents did you use to complete this form? Please mark all that apply. (Income information in financial statements should only be used if the annual income used to determine amount of award is not indicated in any other source.)

1◯ Final order/judgment
2◯ Minutes of settlement
3◯ Separation agreement
4◯ Financial statement(s)
5◯ Previous order(s)
6◯ Affidavit(s)
7◯ Other (specify): _____

A CASE CHARACTERISTICS

1. Court File No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐ **2. Court Identifier:** ☐☐☐☐

3. Source of Child Support Order Information: *(Complete 3.1 OR 3.2)*

3.1 Divorce Order/Judgment:

1◯ Interim child support order
2◯ Divorce order/judgment including child support order
3◯ Divorce order/judgment only – silent on child support
4◯ Other (specify):_____

3.2 Variation Order:

1◯ Interim variation order
2◯ Variation order
3◯ Other (specify):_____

4. Disposition of Order:

1◯ Consent
2◯ Uncontested
3◯ Contested
9◯ Unknown

5. Legal Representation for:

5.1 Mother
1◯ Yes
2◯ No
9◯ Unknown

5.2 Father
1◯ Yes
2◯ No
9◯ Unknown

5.3 Government Agency:
1◯ Yes
2◯ No
9◯ Unknown

6. Date of Decision: ☐☐☐☐☐☐ (yy) (mm) (dd)

6.1 Date Issued and Entered: ☐☐☐☐☐☐ (yy) (mm) (dd)

7. Issues Dealt With in Order/Judgment (mark all that apply):

1◯ Child support
2◯ Custody
3◯ Access
4◯ Spousal support
5◯ Arrears
6◯ Award termination provision
7◯ Cost of living (inflation) clause
8◯ Review clause
9◯ Other (specify):_____

7.1 Issues Dealt With in Supporting Documents (mark all that apply):

1◯ Child support
2◯ Custody
3◯ Access
4◯ Spousal support
5◯ Arrears
6◯ Award termination provision
7◯ Cost of living (inflation) clause
8◯ Review clause
9◯ Other (specify):_____

8. Access Terms *(if any)*

1◯ Reasonable/liberal
2◯ Supervised visiting
3◯ Information/no visiting
4◯ No information/no visiting
5◯ Scheduled/specified
6◯ Other (specify) _____
9◯ Unknown

9. Spousal Award Amount: $☐☐,☐☐☐,☐☐☐.00

1◯ No award
2◯ Lump Sum payment
3◯ Monthly payments
4◯ Yearly payments
5◯ Other (specify):_____
9◯ Unknown /not stated

9.1 Paying Spouse:

1◯ Wife
2◯ Husband

Court File No. ☐☐☐☐☐☐☐☐☐☐☐☐ Court Identifier: ☐☐☐

10. Province of Residence of Parents: Mother ☐☐ Father ☐☐

01 Newfoundland 02 Prince Edward Island 03 Nova Scotia 04 New Brunswick 05 Québec 06 Ontario 07 Manitoba 08 Saskatchewan 09 Alberta 10 British Columbia 11 Yukon 12 Northwest Territories 13 Nunavut 88 Outside Canada 90 Not stated on order 99 The whereabouts of the parent is unknown to the court

10.1 Number of Children in Case: ☐☐

10.1a Number of Children Treated as Under Age of Majority: ☐☐

10.1b Number of Children Treated as Over Age of Majority: ☐☐

11. Principal Residence of Each Child Included in the Order and Child's Year of Birth:

With:	Child #1	Child #2	Child #3	Child #4	Child #5	Child #6
Mother	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)
Father	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)
Both	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)
Other	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)
Not stated	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)	☐☐ (yy)

12. Type of Custody Arrangements under the Guidelines for Children Included in the Order:

1◯ Sole custody - Mother
2◯ Sole custody - Father
3◯ Shared custody
4◯ Split custody
5◯ Custody granted to other (specify):_____
6◯ No order
7◯ Other arrangements (please explain):_____
9◯ Unable to determine/Unknown

B AWARD AMOUNT

13. Total Child Support (Award) Amount (complete all that apply):

$☐☐☐,☐☐☐.00 1◯ Per month
$☐☐☐,☐☐☐.00 2◯ Per year
$☐☐☐,☐☐☐.00 3◯ Lump sum
$☐☐☐,☐☐☐.00 4◯ Other (specify):_____
5◯ Amount is $0.00
6◯ Amount contingent on future circumstances
7◯ No award
9◯ Amount is unknown/not stated

13.1 Paying Parent: 1◯ Mother 2◯ Father 3◯ Not applicable 4◯ Other (specify): _____

14. Annual Income(s) used to Determine Table Amounts OR for Determining a "Different Amount":

14.1 Paying parent: $☐☐☐,☐☐☐.00 9◯ Not stated
14.2 Recipient parent: $☐☐☐,☐☐☐.00 9◯ Not stated

Source of Income Information if Other than Order/Judgment: _____

15. Annual Income(s) used to Determine Each Parent's Share of Special Expenses:

1◯ Not Applicable

15.1 Paying parent: $☐☐☐,☐☐☐.00 9◯ Not stated
15.2 Recipient parent: $☐☐☐,☐☐☐.00 9◯ Not stated

Source of Income Information if Other than Order/Judgment: _____

Court File No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Court Identifier: ☐☐☐☐

16. How was Award Amount Determined?

1◯ Federal Child Support Guidelines used
2◯ "Different amount" determined as per Section 15.1(5), 15.1(7), 17(6.4) or 17(6.5) of the *Divorce Act*
3◯ Provincial Child Support Guidelines used
4◯ Support order or agreement is present, but there is no indication of how it was calculated
5◯ Divorce judgment is silent on support, but a previous order or separation agreement regarding child support is filed with the motion for divorce judgment. Please provide the date of the prior order or agreement: ☐☐☐☐☐☐ (yy) (mm) (dd)
9◯ Unknown/not stated

17. Other child support award amount determined as per _____

_____

Reasons noted in order or judgment (*if any*) in cases where Child Support Guidelines were not followed or if there was a $0.00 award amount: _____

_____

18. For all post-May 1997 orders/judgments, which of the following information was contained in the order? (mark all that apply)

1◯ Name of each child to whom the order relates
2◯ Birth date of each child to whom the order relates
3◯ Income of any spouse whose income is used to determine the amount of the child support order
4◯ Amount of child support determined from the appropriate table for the number of children to whom the order relates
5◯ Amount considered appropriate (not the table amount) for a child the age of majority or over
6◯ Particulars of all special or extraordinary expenses awarded
7◯ Child to whom any special or extraordinary expense relates
8◯ The amount of any special or extraordinary expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense
9◯ Date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made

C DETAILED INFORMATION ON GUIDELINE COMPONENTS

C.1 Table Amount

19. Table Amount for *Paying* Parent as Stated in the Order or Other Supporting Documents: $☐☐,☐☐☐.00 **Per month**

1◯ Not applicable
9◯ Unknown/not stated

20. If Custody is Shared or Split - Table Amount for *Recipient* Parent as Stated in the Order or Other Supporting Documents:

$☐☐,☐☐☐.00 **Per month**

1◯ Not applicable
9◯ Unknown/not stated

21. Discretionary Award Amount for Each Child *at or over* the Age of Majority (Reference: Guidelines Section 3(2)(b)):

IF THERE ARE ANY CHILDREN AT OR OVER THE AGE OF MAJORITY AND IF THEY WERE NOT INCLUDED WHEN DETERMINING THE TABLE AMOUNT FOR ALL THE CHILDREN, PLEASE INDICATE THE AWARD AMOUNT FOR EACH OF THESE CHILDREN, AND THE RELEVANT CHILD (USING THE NUMBERING FROM QUESTION #11)

Child # ___ $☐,☐☐☐.00 **Per month**
Child # ___ $☐,☐☐☐.00 **Per month**
Child # ___ $☐,☐☐☐.00 **Per month**

Court File No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Court Identifier: ☐☐☐☐

C.2 Special or Extraordinary Expenses

22. Special or Extraordinary Expenses Awarded Under Section 7 of the Guidelines:

1◯ Yes - Paying parent's share of special or extraordinary expenses is (complete all that apply):

$☐☐☐,☐☐☐.00 1◯ Per month
$☐☐☐,☐☐☐.00 2◯ Per year
$☐☐☐,☐☐☐.00 3◯ Lump sum
$☐☐☐,☐☐☐.00 4◯ Other (specify): _____

AND/OR If actual amount is not available, paying parent's proportion of special or extraordinary expenses: ☐☐☐ 0 %

2◯ Yes – But award amount and/or proportion is not stated
3◯ None - No special or extraordinary expenses awarded

23. Process for Determining Special or Extraordinary Expenses:
Expense categories designated in Section 7 of the Child Support Guidelines

Check all that apply:		Amount Specified	Proportion Specified
23.1◯	Child care/day care	◯ Yes	◯ Yes
23.2◯	Portion of the medical and dental insurance premiums for the child	◯ Yes	◯ Yes
23.3◯	Health-related expenses	◯ Yes	◯ Yes
23.4◯	For primary or secondary school education or any educational programs	◯ Yes	◯ Yes
23.5◯	Expenses for post-secondary education	◯ Yes	◯ Yes
23.6◯	Extraordinary expenses for extracurricular activities	◯ Yes	◯ Yes

Comments _____

_____

_____

24. "Other" arrangements outside Section 7 (*indicate all information available*): _____

_____

_____

C.3 Undue Hardship

25. Applied for by: 1◯ Not applicable 2◯ Paying parent 3◯ Recipient parent 4◯ Both

26. Were Incomes of Other Household Members Used in Standard of Living Test?

1◯ Yes 2◯ No 3◯ Not stated

27. Outcome of Undue Hardship Application:

1◯ Denied
2◯ *Increase* of guideline amount - (*If available, amount of increase*): $☐☐,☐☐☐.00 Per month OR
3◯ *Decrease* of guideline amount - (*If available, amount of decrease*): $☐☐,☐☐☐.00 Per month
9◯ Unknown/not stated

28. "Reasons" Noted in Order or Judgment (Section 10(6) of Guidelines) (*If any*): _____

_____

Court File No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐ Court Identifier: ☐☐☐

D VARIATIONS

IF THIS ACTION IS A VARIATION TO A PREVIOUS CHILD SUPPORT ORDER UNDER THE DIVORCE ACT, PLEASE ALSO COMPLETE THE FOLLOWING:

29. Applicant: 1◯ Paying parent 2◯ Recipient parent 3◯ Both (cross-application)

30. Reasons for Variation:

1◯ Implementation of Guidelines (section 14(c))
2◯ Other change of circumstances (Section 14(a) or (b) - specify):_____
(NOTE: If this change is the result of an undue hardship application, have you completed Section C.3 above?)
9◯ Unknown/not stated

31. Date of Original Order: ☐☐☐☐☐☐ (yy) (mm) (dd) 9◯ Unknown/not stated

32. Amount of Original Award: $☐☐,☐☐☐.00 Per month 9◯ Unknown/not stated

32.1 Indicate whether the original order was for: 1◯ Child support only
2◯ Child and spousal support combined
9◯ Unknown whether it was for child support only or child and spousal support combined

33. Decision: 1◯ Face-value amount increased 2◯ Face-value amount decreased 3◯ Denied 4◯ Termination order 9◯ Not stated whether increased or decreased

34. Comments Noted in Order or Judgment (if any): _____

_____

If you have any questions about a particular case that are not dealt with in the coding manual, please call the Child Support Help Line at

1-888-881-4273

APPENDIX B

CODING MANUAL

Child Support Awards Under the Divorce Act Project
Coding Manual

Rules for Inclusion: All court decisions under the federal *Divorce Act* regarding divorce, child support, and/or variation of child support in which children are present, i.e., all interim child support orders in divorce files, final divorce judgments that specifically incorporate separation agreements, minutes of settlement or previous court orders; final divorce judgments which are silent on child support even though children are involved; orders varying divorce judgments and corollary relief orders. For final divorce orders and judgments, the survey should be completed after the order has been issued and entered. For variations and interim orders, the form should be completed following a judicial decision.

As much information as possible should be taken from the order/judgment. Occasionally information required to complete the survey is not contained in the order/judgment but is available in other supporting documents contained in the file (e.g., separation agreements, minutes of settlement, affidavits). In these cases, please use this information to complete the survey, except for questions (as noted on the data collection software/form and in this manual) that specifically require information to be collected from the order/judgment.

Note: For purposes of completing this survey, "mother" includes biological mother or step-mother, and "father" includes biological father or step-father.

Description of Data Elements

Case Coded: Alphanumeric 8-digit date field
Enter the date this case was coded
Data Capture Person (Surname, Initial):_____
Print the surname and first initial of the person completing the survey

Name: **What source documents did you use to complete this survey? Please mark all that apply. (Income information in financial statements should only be used if the annual income used to determine amount of award is not indicated in any other source.)**

Description: Possible sources of information used to complete survey. All sources used should be marked. Note that prior interim orders and provincial orders should be included under option "5" – "Previous order(s)". Any additional information used to complete the survey such as corollary relief orders and provisional orders should be specified under "Other".

Format: Check field

Value Range:
1. Final order/judgment
2. Minutes of settlement
3. Separation agreement
4. Financial statement(s)
5. Previous order(s)
6. Affidavit(s)
7. Other (specify): _____

A CASE CHARACTERISTICS

1. Name: **Court File No.**

Description: The unique identifier assigned to the case by the court

Format: Alphanumeric 15-digit field, left justified.

2. Name: **Court Identifier**

Description: Four digit prefix used by the Central Divorce Registry (CDR) to identify court locations.

Format: Alphanumeric 4-digit field

Value Range:

First 2 digits:	Province/Territory Identifier
Last 2 digits:	Court no. within province

3. Name: **Source of Child Support Order Information** (*Complete 3.1 OR 3.2)*

Description: Distinction made between Divorce Orders/Judgments and Variation Orders.
Check only the most recent decision/action stage of the process. The decision or order may reference previous minutes of settlement, prior orders, and/or a separation agreement adopted in the order.

3.1 Name: **Divorce Order/Judgment**

Description: Type of Divorce Order/Judgment

Complete this item for both interim and final child support orders. If the divorce judgment is silent on the issue of child support, but a prior court order or separation agreement dealing with child support is filed with the motion for a divorce judgment, complete the rest of the survey as though the prior court order or separation agreement for child support were part of the divorce judgment. A number of cases involve divorce judgments only, and are silent on child support Such cases should be included under value "3-Divorce order/judgment only – silent on child support". Corollary relief orders, provisional orders, and reserved child support orders should be coded under value "4-Other – (specify)" and the specifics written in the blank.

Format: Check field

Value Range:
1. Interim child support order
2. Divorce order/judgment including child support order
3. Divorce order/judgment only – silent on child support
4. Other (specify):_____

3.2 Name: **Variation Order**

Description: Type of Variation Order

Complete this item for both interim and final variation orders

Format: Check field

Value Range:
1. Interim variation order
2. Variation order
3. Other (specify):_____

4. Name: **Disposition of Order:**

Description: Data will usually be found in the Preamble of the order.
Check "1-consent" if it is clear that both parties consented to the order.
Check "2-uncontested" if it is clear that the judge had to make a finding in the absence of the respondent or if the preamble states the finding was made by default.
Check "3-contested" if it is clear that the judge had to make a finding based on involvement/argumentation of both parties. There are some cases where it may be indicated that consent was given as to the form but not content of the order. These cases, in which a judge had to make a decision about content, would be contested.
Check "9-unknown" if the disposition of the order is not clear.

Format: Check field

Value Range:
1. Consent
2. Uncontested
3. Contested
9. Unknown

5. Name: **Legal Representation for:**

Description: Whether parties to the action were represented by legal counsel at any stage of the proceedings.
If there is any indication of legal representation for either or both parents in the court order, the minutes, prior orders, and/or separation agreements, answer "1-yes". If there is indication that the person acted on their own behalf or refused independent legal advice, answer "2-no". Otherwise select "9-unknown".
In Variation orders government agencies may have intervenor status. If any government agency has status in this action, please check off the "1-yes" category under "Government agency." Examples of government agencies that may be involved include: Maintenance Enforcement agencies or Social Service/Social Welfare agencies.
For the purposes of this study, if only duty counsel (lawyer located at court) or mediators are involved, this in itself does not qualify as legal representation for the spouses.

Format: Check fields

	5.1 Mother	5.2 Father	5.3 Government Agency
Values:	1. Yes	1. Yes	1. Yes
	2. No	2. No	2. No
	9. Unknown	9. Unknown	9. Unknown

6. Name: **Date of Decision**

Description: Date of a judicial decision about child support. In most cases, this will be the same as the date of endorsement.
If the decision is silent on child support, the date is still the date of the divorce judgment.

Format: Alphanumeric 8-digit date field

Value Range:	Field Position	Description	Example
	1-4	Year	1996
	5-6	Month	04 (for April)
	7-8	Day	16 (for the 16th)

The range for month is 01-12. The range for days is 01-31

6.1 Name: **Date Issued and Entered**

Description: Date on which the order/judgment was issued and entered. For interim orders and variations that may not be issued and entered, this item should be left blank.

Format: Alphanumeric 8-digit date field

Value Range:	Field Position	Description	Example
	1-4	Year	1996
	5-6	Month	04 (for April)
	7-8	Day	16 (for the 16th)

7. Name: **Issues Dealt with in Order/Judgment**

Description: Indicate issues dealt with in this order/judgment. Some files may include other documents such as separation agreements or prior orders in addition to the final order/judgment. The documents should only be considered as forming part of the order/judgment if there is clear indication in the order/judgment that these documents have been incorporated into it (e.g., by specific reference to the prior agreement or order). Otherwise, these documents should be considered supporting and used when answering question 7.1 below. Please mark all that apply. A review clause would include such requirements as an annual review of the paying parent's income. For spousal support, only include support awards involving money.

Format: Check field

Value Range:
1. Child support
2. Custody
3. Access
4. Spousal support
5. Arrears
6. Award termination provision
7. Cost of living (inflation) clause
8. Review clause
9. Other (specify)

7.1 Name: **Issues Dealt With in Supporting Documents**

Description: Indicate issues dealt with in supporting documents available to you in the file (e.g., separation agreements, minutes of settlement, affidavits) that were not incorporated in the current order/judgment. Please mark all that apply. A review clause would include such requirements as an annual review of the paying parent's income. For spousal support, only include support awards involving money.

Format: Check field

Value Range:
1. Child support
2. Custody
3. Access
4. Spousal support
5. Arrears
6. Award termination provision
7. Cost of living (inflation) clause
8. Review clause
9. Other (specify)

8. Name: **Access Terms (if any)**

Description: Record terms of access arrangements.
"1-Reasonable/liberal" - includes no restrictions on access
"2-Supervised visiting" - means that access visits must be supervised
"3-Information/no visiting" - refers to situations where information regarding the child(ren) may be received, but no visiting is allowed
"4-No information/no visiting" - refers to complete cut-off from the child(ren)
"5-Scheduled/specified" – is applicable if access is specified by a schedule
"6-Other (specify)" - if none of the above seem applicable but access terms are provided in the order, check and describe as written in the order. This would also include shared custody.
"9-Unknown" – if access is not dealt with or is unknown
If it is stated that access is "Reasonable/liberal", but an access schedule is also specified (e.g., every second weekend), please check "Scheduled/specified".

Format: Check field

Value Range:
1. Reasonable/liberal
2. Supervised visiting
3. Information/no visiting
4. No information/no visiting
5. Scheduled/specified
6. Other (specify): _____
9. Unknown

9. Name: **Spousal Award Amount**

Description: Amount and frequency of spousal award payments, if any. If a spousal award is not cash, but something such as property, specify this under "Other".

Format: Check field and alphanumeric 8-digit dollar field (ranging from $00,000,000 to $99,999,999)

Value Range:
1. No award
2. Lump sum payment
3. Monthly payments
4. Yearly payments
5. Other (specify): _____
9. Unknown/not stated

9.1 Name: **Paying Spouse**:

Description: Indicates who is paying whom.

Format: Check field

Value Range:
1. Wife
2. Husband

10. Name: **Province of Residence of Parents**

Description: For each parent or guardian, the code representing their province/territory of residence should be recorded in appropriate box.

Format: Alphanumeric 2-digit field

Values:
01 to 13 - Province or territory (*Use codes on form*)
88 - Outside Canada
90 - Not stated in order
99 - The whereabouts of the parent is unknown to the court

10.1 Name: **Number of Children in Case**

Description: The total number of children involved in this action.

Format: Alphanumeric 2-digit field

10.1a Name: **Number of Children Treated as Under Age of Majority**

Description: The total number of children treated as under the age of majority involved in this action.

Format: Alphanumeric 2-digit field

10.1b Name: **Number of Children Treated as Over Age of Majority**

Description: The total number of children treated as over the age of majority involved in this action.

Format: Alphanumeric 2-digit field

11. Name: **Principal Residence of Each Child Included in the Order and Child's Year of Birth**

Description: For each child included in the order (by Child #) indicate whether *principal* residence is with mother, father, both parents, or some other arrangements and then record the year of birth for the child in the appropriate box.
Use the "both" category only if there is a shared custody arrangement (at least 40% with each parent).
If the child does not reside with either parent (e.g. if they live with other relatives or live on their own), please specify under "Other".
If principal residence for one or more children is unknown, indicate the "Not stated" category and record the year of birth if known. If the place of residence is known but the year of birth is unknown, simply check the place of residence that applies.
Please ensure that when there is more than one child in a family the information for each child is entered in a separate column.

Format: Thirty alphanumeric 2-digit fields.

12. Name: **Type of Custody Arrangements under the Guidelines for Children Included in the Order**

Description: Record the decision regarding primary residence of all children included in the order.
Note that "joint custody" and "joint guardianship" are not guideline terms. These terms are often used when both parents have joint "legal" decision making responsibility regarding decisions on education, medical treatment, religion, etc.
In relation to the new guidelines and therefore this question, however, "custody" refers to the primary *residence* of the children.
"1-Sole custody - Mother" - means that the primary residence is with the mother and the child(ren) spends more than 60% of his/her time there
"2-Sole custody – Father" – means that the primary residence is with the father and the child(ren) spends more than 60% of his/her time there
"3-Shared custody" – is the custody arrangement whereby the child(ren) generally spends equal time at both parent's residences. Legally, the guidelines have stipulated that the child must spend at least 40% of his/her time with both parents to be considered "shared".
"4-Split custody" – is an arrangement whereby each parent has sole custody (i.e., maintains the primary residence) of at least one child specified in the action

"5-Custody granted to other (specify)" – if custody is granted to someone other than the parents, select this option and specify the relationship of the guardian to the child
"6-No order" – if the order/judgment *specifically* indicated that custody is not dealt with, select this response, or if there is an indication that this is a *de facto* custody arrangement
"7-Other arrangements (please explain)" – if there are other arrangements, such as some combination of shared, split and sole custody, select this option and explain
"9-Unable to determine/unknown" – if you can't determine custody arrangements from the content of the order/judgment, select this option.

Format: Check field

Value Range:
1. Sole Custody – Mother
2. Sole Custody – Father
3. Shared custody
4. Split custody
5. Custody granted to other (specify): _____
6. No order
7. Other arrangements (please explain): _____
9. Unable to determine/unknown

B AWARD AMOUNT

Note: Please round all income and award amounts to the nearest dollar.

13. Name: Total Child Support Award Amount

Description: Total Child Support Award amount that is to be paid by one of the parents.
Indicate the amount of the child support, which should include the basic table amount plus or minus adjustments for special expenses or undue hardship, as well as payments made to third parties such as tuition paid to educational institutions, but not payments in arrears. In cases of split custody where each parent may be required to pay the other child support, enter the net amount which is calculated by deducting the amount of the lower paying parent from that of the higher paying parent. If the order refers to a hypothetical situation where support payments are linked to future employment, enter only what the current or most consistent award is.
If support is paid on more than one frequency schedule (e.g., a monthly child support amount and an annual amount for special or extraordinary expenses) please code each in on the appropriate line.
If the divorce judgment is silent on child support but a prior court order or separation agreement dealt with child support, still indicate the amount awarded in the appropriate space. If Child Support Guidelines were not used in the previous order, please indicate this in Question 16 by checking "4-Support order is present but there is no indication of how it was calculated".
If a payment schedule is different than those listed, check "4-Other" and write in the payment frequency.
If the order/judgment clearly indicates that a child support award in the amount of $0.00 has been made, leave the amount boxes blank and select option "5-Amount is $0.00". If

the child support award is contingent on some future circumstance (e.g., when the payer is employed), select option "6-Amount contingent on future circumstances".
If no award is given or there is a "reserve judgment on child support" select "7-No award".
If no mention is made of child support in any available documents, leave the boxes blank and select option "9-Amount is unknown/not stated".

Format: Four alphanumeric 5-digit dollar fields (ranging from $00,000 to $99,999) plus check fields

13.1 Name: Paying Parent

Description: Indicates whether the mother is the paying parent or the father is the paying parent in this court action.
In cases of $0.00 awards or no mention of award select option "3-Not applicable". If child support is to be paid by a party other than the mother or father, select option "4-Other - specify".
If there is another "payer" to the children involved in this action but awarded in a previous court action such as a previous father/step-father, indicate in the comments section provided.

Format: Check field

Value Range:
1. Mother
2. Father
3. Not applicable
4. Other (specify): _____

14. Name: Annual Income(s) Used to Determine Table Amounts OR for Determining a "Different Amount"

Description: Provide the annual income of the paying parent and the recipient parent (if stated) which were used to determine the child support award whether the guidelines were used to determine the amount or not. Use the income as specified in the order. If the amount(s) is not available in the order, use other sources such as income or financial statements as a last resort. If a source other than the order was used to determine incomes, specify the source in the blank. If income was not available anywhere indicate "Not stated".

Format: Two alphanumeric 7-digit dollar fields (ranging from $0,000,000 to $9,999,999) and check field

14.1 Paying parent 9. Not stated
14.2 Recipient parent 9. Not stated

15. Name: Annual Incomes Used to Determine Each Parent's Share of Special Expenses

Description: Incomes of the Payer parent and/or Recipient parent used to determine share of Special Expenses. If a source other than the order was used to determine incomes, specify the source in the blank. If no special expenses, indicate "1-Not applicable".

Format: Two alphanumeric 7-digit dollar fields (ranging from $0,000,000 to $9,999,999) and check fields

Value Range: 1. Not applicable

15.1 Paying Parent 9. Not stated
15.2 Recipient Parent 9. Not stated

16. Name: How Was Award Amount Determined?

Description: If the order indicates that Child Support Guidelines were followed/applied to determine any part of the award amount check "1-Federal Child Support Guidelines used" or "3-Provincial Child Support Guidelines used".
The latter applies only in the provinces where guidelines have been "designated".
Also, if it is stated that a table amount and/or Section 7 special expenses are part of the award, check either "1-Federal Child Support Guidelines used" or "3- Provincial Child Support Guidelines used" where appropriate.
If the guideline tables were not used at all, check "2-Different amount determined as per Section 15.1(5)..." and indicate the methodology and Sections of the *Divorce Act* where referenced in the comments section.
There may be situations where a support order is present but there is no indication of how it was calculated (guidelines weren't used). In these cases, select option "4-Support order or agreement is present but there is no indication of how it was calculated". Make sure this amount is also entered in Question 13. In situations where the judgment does not refer specifically to support but there is a previous order, judgment, or separation agreement on file that dealt with child support, select option "5-Divorce order is silent on support but a previous order or separation agreement regarding child support is filed..." and indicate the date of the previous order or agreement if available. **Note:** If it is clear that this previous order or agreement used Child Support Guidelines, you should still select option "1" or "3".

Format: Check field, open-ended text fields, and 6-digit date field.

Value Range:
1. Federal Child Support Guidelines used
2. "Different amount" determined as per Section 15.1(5), 15.1(7), 17(6.4) or 17(6.5) of the *Divorce Act*.
3. Provincial Child Support Guidelines used.
4. Support order or agreement is present, but there is no indication of how it was calculated.
5. Divorce judgment is silent on support, but a previous order or separation agreement regarding child support is filed with the motion for divorce judgment. Please provide the date of the prior order or agreement.
9. Unknown/not stated

17. Name: Other child support award amount determined as per

Description: If the child support award does not fit into any of the categories in Question 16, but there is some indication of how it was determined, please write this in the blank.

If reasons why the Federal or Provincial Child Support Guidelines were not used or why there was a $0.00 award amount are given, write these in the second blank for this question.

Format: Two open-ended text fields

18. Name: **For all post-May 1997 orders/judgments, which of the following information was contained in the order? (mark all that apply)**

Description: Specify the information that was contained in the order/judgment or attached documents incorporated as part of the order (as opposed to supporting documents in the file). For option "6-Particulars of all special or extraordinary expenses awarded", check this only if the individual special or extraordinary expense(s) awarded in the order are specified (e.g., Child care/day care, Portion of medical and dental insurance premiums for the child, etc.)

Format: Check field

Value Range:
1. Name of each child to whom the order relates
2. Birth date of each child to whom the order relates
3. Income of any spouse whose income is used to determine the amount of the child support order
4. Amount of child support determined from the appropriate table for the number of children to whom the order relates
5. Amount considered appropriate (not the table amount) for a child the age of majority or over
6. Particulars of all special or extraordinary expenses awarded
7. Child to whom any special or extraordinary expense relates
8. The amount of any special or extraordinary expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense
9. Date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made

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C DETAILED INFORMATION ON GUIDELINE COMPONENTS

This should be filled out if any part of the award includes either a table amount (C.1) *OR* any special expenses (C.2) *OR* undue hardship (C.3). Fill out these sections only if this information has been specified in the divorce judgment, order, agreement or previous order.

C.1 Table Amounts

19. Name: **Table Amount for *Paying* Parent as Stated in the Order:** (only include if specified in order or supporting documents. Please note that this does not refer to the parent's income.)

Description: Table amount as specified in the order or supporting documentation. If the table amount is not listed in the order or agreement leave blank. Note that the table amount does not include special expenses or undue hardship.

Format: Check field and alphanumeric 5-digit dollar field (ranging from $00,000 to $99,999).

Value Range: 1. Not applicable
9. Unknown/not stated

20. Name: **If custody is Shared or Split - Table Amount for *Recipient* Parent as Stated in the Order** (only include if specified in order or supporting documents)

Description: For split custody, the Guidelines require that a table amount be determined for each parent.
For shared custody, the Guidelines suggest that table amounts for each parent be taken into account.

Format: Alphanumeric 5-digit dollar field (ranging from $00,000 to $99,999)and check fields

Value Range: 1. Not applicable
9. Unknown/not stated

21. Name: **Discretionary Award Amount for Each Child *at* or *over* the Age of Majority**

Description: If there are any children at or over the age of majority and if they were not included when determining the Table amount for all the children, indicate the award amount for each child at or over the age of majority, using the numbering from question #11 to identify each child (Reference: Guidelines section 3(2)(b)). If there are no children over the age of majority, please leave this question blank. If there are children over the age of majority, but they were included when determining the table amount for all the children, leave this question blank. Only enter an amount of $0 if there are children over the age of majority, but no provision was made for them in the child support order.

Format: Three alphanumeric 4-digit dollar fields (ranging from $0,000 to $9,999), one for each child number

C.2 Special or Extraordinary Expenses

22. Name: **Special or Extraordinary Expenses Awarded under Section 7 of the Guidelines**

Description: Amount of Special or Extraordinary Expenses to be paid to the Recipient parent by the Paying parent AND/OR the proportion of expenses to be paid.
Enter the amount in the boxes beside the appropriate payment frequency, and check the payment frequency in the check boxes. Complete all that apply.
If the amount of special or extraordinary expenses is not included in the order, but the proportion of expenses to be paid by the paying parent is available, code this percentage in the percentage boxes.

Format: Check fields and alphanumeric 6-digit dollar fields (ranging from $000,000 to $99,999) and alphanumeric 3-digit percentage field

Value Range: 1. Yes – Paying parent's share of special or extraordinary expenses is: (Provide monthly amount to be paid to Recipient and/or proportion of expenses)
2. Yes – Award amount and/or proportion not stated (No indication of special expenses amount or proportion)
3. None - No special or extraordinary expenses awarded

23. Name: Process for Determining Special or Extraordinary Expenses

Description: Check the box beside each special or extraordinary expense category that was awarded in the case. For each expense awarded, if either amount or proportion was specified, check the box under the appropriate alternative. If both amount and proportion were specified, check the boxes under each alternative. If neither amount nor proportion was specified, do not check any of these boxes. If categories for special expenses are stated *but not* amounts or proportions, then the categories should still be checked off. Some orders will specify expenses for other items such as life insurance or registered education savings plans. Please note these in Question 24.

Format: Three check fields for each expense and an open-ended text field

Section 7 expenses:	**Amount Specified**	**Proportion Specified**
23.1 Child care/day care	1. Yes	2. Yes
23.2 Portion of medical and dental insurance for the child	1. Yes	2. Yes
23.3 Health-related expenses	1. Yes	2. Yes
23.4 Primary and Secondary School/Educational Programs	1. Yes	2. Yes
23.5 Post-secondary school	1. Yes	2. Yes
23.6 Extracurricular activities	1. Yes	2. Yes

24. Name: "Other" arrangements outside of Section 7

Description: If any other expenses were part of the award outside of Section 7 expenses detailed in items 23.1 through 23.6 above, record any available explanation or information

Format: Open-ended text field

C.3 Undue Hardship

25. Name: Applicant

Description: Check whether application made by payer, recipient, or both. Check "Not applicable" if this case does not include an undue hardship application.

Format: Check field

Value Range:
1. Not applicable
2. Paying Parent
3. Recipient Parent
4. Both

26. Name: Were the Incomes of Other Household Members Used in Standard of Living Test?

Description: Indicate whether the income of other members of either the paying parent's or recipient parent's household were included when comparing their respective standards of living.

Format: Check field

Value Range:
1. Yes
2. No
9. Not stated

27. Name: Outcome of Undue Hardship Application

Description: What was the result of the application for Undue Hardship by either parent? If the award is greater than the guideline amount, select option "2-Increase of guideline amount" and, where available from the documents, also record the dollar amount difference per month. If the award is less than the guideline amount, select option "3-Decrease of guideline amount" and where available from the documents, also record the dollar amount difference per month.

Format: Two alphanumeric 5-digit dollar fields (ranging from $00,000 to $99,999) and check field

Value Range:
1. Denied
2. Increase of guideline amount. Where available from documents also record amount of increase (amount per month). **OR**
3. Decrease of guideline amount. Where available from documents also record amount of decrease.(amount per month)
9. Unknown/not stated

28. Name: "Reasons" Noted in Order or Judgment (if any)

Description: Any reasons noted as per Section 10(6) of the Child Support Guidelines, i.e. "Where the court makes a child support order in a different amount under this section, it must record its reasons for doing so."

Format: Open-ended text field

D ***IF THIS ACTION IS A VARIATION TO A PREVIOUS CHILD SUPPORT ORDER UNDER THE DIVORCE ACT, PLEASE ALSO COMPLETE THE FOLLOWING:***

29. Name: **Applicant**

Description: Who applied for the Variation

Format: Check field

Value Range: 1. Paying parent
2. Recipient parent
3. Both (cross-application)

30. Name: **Reasons for Variation (Guidelines Section 14)**

Description: What reason was given in the variation order by the judge to vary the existing order? If the reason was other than implementation of the Child Support Guidelines, choose option "2-Other change of circumstance" and specify the reason. If no reason was given, choose option "9-Unknown".

Format: Check field

Value Range: 1. Implementation of Guidelines (refer to section 14(c) of Guidelines)
2. Other change of circumstances (Section 14(a) or (b) – specify): _____
9. Unknown/not stated

31. Name: **Date of Original Order**

Description: Date of the order that is being varied

Format: Alphanumeric 8-digit date field

Value Range: 9. Unknown/not stated

32. Name: **Amount of Original Award**

Description: Amount of order that is being varied.

Format: Alphanumeric 5-digit dollar field (ranging from $00,000 to $99,999)

Value Range: 9. Unknown/not stated

32.1 Name: **Indicate whether the original order was for:**

Description: Specification of what the order being varied included

Format: Check field

Value Range:
1. Child support only
2. Child and spousal support combined
9. Unknown whether it was for child support only or child and spousal support combined

33. Name: **Decision**

Description: What was the court's decision regarding the application to vary?

Format: Check field

Value Range:
1. Face-value amount increased
2. Face-value amount decreased
3. Denied
4. Termination order
9. Not stated whether increased or decreased

34. Name: **Comments noted in order or judgment, (if any)**

Description: Any comments that were included in the order or judgment.

Format: Open-ended text field

If you have any questions about a particular case that are not dealt with in this coding manual, please call the Child Support Help Line at

1-888-881-4273

02/16/00